

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANDRE JACOBS

Plaintiff

vs.

Civil Action No. 04-1366

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, et al

Defendants

PROCEEDINGS (Day 4)

Transcript of Jury Trial Proceedings, continuing
Thursday, November 6, 2008, United States District Court,
Pittsburgh, Pennsylvania, before Honorable Joy Flowers Conti,
United States District Judge.

APPEARANCES:

For the Plaintiff: ANDRE JACOBS, Pro Se

For the Defendant: SCOTT BRADLEY, Esquire
ROBERT WILLIG, Esquire

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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

1 (Whereupon, court convened.)

2 THE COURT: Please be seated. We're still waiting
3 for the defendant.

4 MR.WILLIG: We have the two Camp Hill inmates on the
5 line now. They can see us, Matt; we just can't see them.

6 THE COURT: Mr. Jacobs, as soon as you're ready, if
7 you could just let me know. Take your time.

8 Which witness do we have here on the screen?

9 MR. BRADLEY: This is David Smith.

10 THE COURT: Mr. Smith, okay.

11 STATE OFFICER: No, it's Edwards.

12 MR. BRADLEY: My apologies.

13 THE COURT: Okay.

14 MR. JACOBS: I'm ready, Your Honor.

15 THE COURT: Good morning, Mr. Edwards.

16 THE WITNESS: Good morning.

17 THE COURT: I am Judge Conti, and this is a civil
18 case that has been brought by Andre Jacobs against various
19 defendants who are employed by the Pennsylvania Department of
20 Corrections.

21 This is a case where we're going to have testimony
22 from you. You're a witness called by Mr. Jacobs.

23 Mr. Jacobs, is there anything you wish to ask him
24 now, before I bring in the jury?

25 MR. JACOBS: No. I think I want to ask him about

1 whether he refused to come to this trial or not, just for the
2 record.

3 THE COURT: You need to pull, you can pull the base
4 close to you; it moves.

5 * * * * *

6 MICHAEL EDWARDS, a witness herein, having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION (out of the presence of the jury)

9 BY MR. JACOBS:

10 Q. Can you hear me, Mr. Edwards?

11 A. Yes.

12 Q. I was advised yesterday that you refused to come to
13 participate in this trial. Is that correct?

14 A. Yes.

15 Q. And is there a reason why you refused to participate in
16 this trial?

17 A. Yes.

18 Q. What is the reason?

19 A. It's the -- David Smith was assaulted on his way here,
20 after he left here. There was no connection, and he was
21 assaulted.

22 Q. For him trying to come here to participate in the
23 trial?

24 A. I have no knowledge of why he was assaulted, but he was
25 assaulted after they didn't -- he found out that it wasn't no

1 connection. So, he said it wasn't no lawyer, so he asked to
2 come back to his cell. Once he got back on the block he was
3 assaulted. So, I refused to come out of my cell.

4 Q. Because you were afraid you might be assaulted, too?

5 A. Yes.

6 Q. Has that in any way affected your willingness to
7 participate in the trial at this point?

8 A. Yes.

9 Q. In what way?

10 A. Um, I fear for my safety.

11 Q. Do you fear for your safety right now?

12 A. Not around these particular guards here. I don't know
13 them. But there's certain guards that work in the unit I'm
14 in. I fear for my safety.

15 THE COURT: Okay. This is Judge Conti. If there
16 are any problems that you experience, Mr. Edwards, you can let
17 the Court know, and the Court will view any adverse actions
18 taken against you as an attempt to obstruct justice and to
19 intimidate a witness.

20 I'm not going to pre-judge anyone one way or the
21 other. I'm just letting everyone know that an inmate, just as
22 anyone else, has a right to testify without fear of
23 retribution.

24 So, but you have at this stage, Mr. Edwards, you
25 have not been assaulted; is that correct?

1 THE WITNESS: No, ma'am, but I have been threatened.

2 THE COURT: Okay.

3 BY MR. JACOBS:

4 Q. Who were you threatened by, Mr. Edwards?

5 A. Um, that information is on its way to the mail; two
6 declarations.

7 Q. I mean, was it a prisoner or guard?

8 A. They were correctional officers. They found your
9 correspondence to me in the cell about this case.

10 Q. And that was the basis for them threatening you?

11 A. Yes.

12 Q. And what was the nature of the threats?

13 A. Um, I'm not to testify in your behalf.

14 THE COURT: Okay. We'll have that matter looked
15 into.

16 But at this stage, Mr. Edwards, are you willing to
17 testify?

18 THE WITNESS: Yes.

19 THE COURT: All right. So, with that, okay.

20 I'm going to order the colloquy that was outside the
21 presence of the jury with the witness, Mr. Edwards, to be
22 transcribed, and I'm going to have that done at the cost of
23 the defendants at this time, and I'll re-assess whether the
24 costs should be allocated differently at an appropriate time.

25 All right. So, with that, I'm going to ask if the

1 two guards, remember how they were stationed yesterday? Do
2 these guards know about that?

3 MR.WILLIG: Randy, can you have the two officers
4 stand off, outside of camera view.

5 THE COURT: To the side.

6 MR.WILLIG: To the side. If he's on a tether.

7 Can you zoom the camera in? Okay. There you go.
8 That's good. Just make sure the CO's stay outside of the
9 camera range. We're good. Thank you.

10 THE COURT: Okay. Are we ready to go?

11 Mr. Jacobs, you ready for this witness?

12 MR. JACOBS: Yes, Your Honor.

13 THE COURT: Okay. Please rise for the jury.

14 MR. BRADLEY: Excuse me, Your Honor, before the jury
15 comes in, I would ask that, because whatever happened at Camp
16 Hill --

17 THE COURT: That's not going to be the subject of
18 any of the questioning.

19 MR. BRADLEY: I just wanted that for the record.

20 THE COURT: Yes. I said I will have it looked into.

21 MR. BRADLEY: Thank you, Your Honor.

22 THE COURT: Okay.

23 (Jury is seated.)

24 THE COURT: Please be seated.

25 Members of the jury, you'll recall yesterday I

1 mentioned that we would take witnesses out of turn. The
2 defendant had not finished putting on his evidence.

3 We're now going to go back and interrupt the
4 questioning of the witness from the defense that we had on
5 yesterday. She'll be returning later in the trial to finish
6 up the cross examination and the rest of her testimony. But
7 today we have one of Mr. Jacobs' witnesses.

8 I'm going to ask that the witness please be sworn
9 in.

10 * * * * *

11 MICHAEL EDWARDS, a witness herein, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. JACOBS:

15 Q. State your name for the record.

16 A. Michael Edwards.

17 Q. And you're currently incarcerated?

18 A. At SCI Camp Hill, SMU.

19 Q. Was there ever a time you were at SCI Pittsburgh?

20 A. Yes.

21 Q. At what time were you at SCI Pittsburgh?

22 A. Two separate times. From 1984 to '91, and from 1998
23 'til 2003.

24 Q. Was there ever a time while you were at SCI Pittsburgh
25 in the second term that you were housed in a restricted

1 housing unit?

2 A. Yes. I was housed in A-1 and A-2 from 1998 to 2003. I
3 was housed in the RHU.

4 Q. Did you ever use the grievance procedure when you were
5 at SCI Pittsburgh?

6 A. Yes, sir.

7 Q. To what extent did you use that procedure?

8 A. Excuse me?

9 Q. To what extent did you use the grievance procedure?

10 A. Total exhaustion, from the grievance to Camp Hill.

11 Q. On how many occasions?

12 A. Numerous.

13 Q. Could you give an estimate?

14 A. Ah, I have a document here -- if you would like to
15 copy, or the Attorney General would like to copy -- of
16 documents actually stolen out of my cell from 1998 to 2000 on
17 a grievance.

18 Q. Okay. There are officers' names. You have any names
19 in regards to what officers participated in these type of
20 taking of documents?

21 A. Yes.

22 Q. Was there ever occasion when -- do you know an officer
23 by the name of Giddens?

24 A. Yes.

25 Q. Who is he?

1 A. Lieutenant Giddens.

2 Q. How do you know him?

3 A. I filed a grievance on him pertaining to an incident
4 where an inmate committed suicide, and within an hour of him
5 committing suicide, he was assaulted by officers in A-1 of the
6 RHU at SCI Pittsburgh.

7 Q. Okay.

8 A. He placed me on restrictive movement. I couldn't take
9 showers, I couldn't take -- I couldn't go to law library. I
10 couldn't have yard. I was barred from trays, showers, due to
11 me giving a statement to the Pennsylvania State troopers
12 concerning that incident.

13 Q. So, you were retaliated against for giving a statement?

14 A. Oh, definitely. I was placed in a cell with no
15 clothing and four-point restraints, face down on the concrete
16 floor for nine days.

17 Q. Did you file a grievance, did you file a grievance
18 about this?

19 A. No, I couldn't, because you have a time period of 15
20 days. They kept me in this cell, four-point restraint, face
21 down for nine days. I didn't get my property back until two
22 and a half months later.

23 Q. So your property was taken?

24 A. Excuse me?

25 Q. Your property was taken from you?

1 A. I have that in writing, black and white, from this
2 Institution, from SCI Pittsburgh, to SCI Fayette, to where I'm
3 at now. There is approximately six boxes of legal documents.
4 The majority of the documents pertain to me being retaliated
5 against, others being retaliated against at SCI Pittsburgh,
6 RHU A-1, A-2 and A-3 units.

7 Q. And how do you know that other prisoners were being
8 retaliated against?

9 A. I was moved from one unit to another. I was
10 specifically told by Lieutenant Giddens, retract the statement
11 that I gave to the State troopers. And I also wrote a
12 declaration to the mental health unit, which they used at a
13 suicide hearing to determine the death of Mr. Solomon, Howard
14 Solomon. That was his name. He was a lifer, and I witnessed
15 him being physically assaulted.

16 I filed a grievance and a complaint with the
17 Pennsylvania State troopers about what I witnessed, and
18 Lieutenant Giddens was a witness while the State troopers was
19 processing the crime scene, or the scene of the suicide. He
20 told me to stop talking to the State troopers. And when I
21 hollered out my cell, I was placed on -- well, the restriction
22 was this, I couldn't come out my cell for nothing. And I was
23 moved from the cell I was in, placed in the corner cell in
24 another part of the RHU, and was told through other
25 correctional officers, as well as Giddens, all I had to do was

1 withdraw the grievance and the statements that I gave to the
2 State troopers and he would put me back on regular status,
3 like every other inmate. So, I was denied basically
4 everything.

5 Q. Meaning probably everything that you were generally
6 permitted to have in your cell?

7 A. Yes. And he recently, he recently retaliated against
8 me at SCI Fayette.

9 MR. BRADLEY: Your Honor, excuse me.

10 THE COURT: Excuse me, just one moment.

11 MR. BRADLEY: I understand anything that happened
12 after September, 2000 isn't relevant -- September, 2003, isn't
13 relevant to what Mr. Jacobs claims are; specifically, what
14 happened in another Institution with regard to this inmate.

15 THE COURT: We need to keep focused on the relevant
16 time table. So, that objection is sustained.

17 BY MR. BRADLEY:

18 Q. Did you hear that, Mr. Edwards?

19 A. Yes.

20 Q. And the relevant years are what, 2001, 2003, and before
21 that time frame.

22 A. Okay.

23 Q. 2003 and before.

24 A. Okay.

25 Q. How were your grievances addressed? I mean, did you

1 get resolution for your grievances, grievances that you filed
2 throughout your time, your years of using the grievance
3 process?

4 A. I got no relief. I was told, as long as I filed
5 grievances, help other inmates --

6 MR. BRADLEY: Your Honor, excuse me.

7 THE COURT: Okay. Just a second. He has to say
8 who, if there were any, of the defendants that were involved
9 in that type of conduct. It can't be hearsay from other third
10 person.

11 BY MR. BRADLEY:

12 Q. Did you hear that?

13 A. Yes.

14 Who are the defendants? The only defendant I know of
15 is Giddens, that you explained that I heard his name, Giddens.

16 Q. Okay. What I'm going to do, I'm going to tell you all
17 the defendants who are in this case, and I want you to
18 identify which ones may have participated in retaliating
19 against you, conspiring against you, or obstructing your
20 grievances, destroying your property, anything dealing with
21 those specific issues from 2003 and beforehand.

22 THE COURT: Right. You need to focus. The inquiry
23 should be directed towards taking of the legal property, and
24 the grievances relating to that. Okay.

25 MR. JACOBS: Retaliation as well.

1 THE COURT: Yes.

2 MR. JACOBS: Okay.

3 BY MR. JACOBS:

4 Q. Can you hear me?

5 A. Yes.

6 Q. The defendants in the case are Jeffrey Beard, Thomas
7 McConnell, Carol Scire -- but it's pronounced Scire.

8 A. Yes.

9 Q. Gregory Giddens, Allen Lynch, Robert Bittner, Captain
10 Simpson, Kristin P. Reisinger, Michael Ferson, Shelly Mankey,
11 William Stickman, Frank Chirico, David McCoy.

12 Do you recognize -- do you recognize any of those
13 names?

14 A. Just about everybody but three.

15 Q. Which ones were they?

16 A. Um, after you spoke about the executive staff at Camp
17 Hill, from, well, McConnell --

18 THE COURT: Why don't you go through each name? I
19 think that might be easier, since he doesn't have any paper in
20 front of him.

21 MR. JACOBS: Okay.

22 BY MR. JACOBS:

23 Q. Do you know Jeffrey Beard?

24 A. Yes. I talked to him personally.

25 Q. Do you know Thomas McConnell?

1 A. Yes.

2 Q. Do you know Carol Scire?

3 A. Yes.

4 Q. Do you know Gregory Giddens?

5 A. Yes.

6 Q. Do you know Allen Lynch?

7 A. Is he a correctional officer?

8 Q. He is a correctional officer?

9 A. I only know one Lynch. That was at SCI Pittsburgh. I
10 don't know if his first name is Allen but I do know a CO
11 Lynch.

12 Q. And where did you know him from?

13 A. A-1, RHU. He was involved in.

14 Q. Wait. Just tell me where.

15 A. He was involved in this particular incident.

16 Q. During what time frame, what year; do you remember?

17 A. 2000, 2001.

18 Q. Okay. Do you know Robert Bittner?

19 A. Bittner?

20 Q. Yeah.

21 A. I only know one Bittner, and he was, if I'm not
22 mistaken, records room officer at SCI Fayette -- I mean, SCI
23 Pittsburgh. That's the only Bittner I know. I appealed some
24 paperwork to him.

25 Q. Paperwork in regards to what?

1 A. Ah, records.

2 Q. You say that was SCI?

3 A. SCI Pittsburgh.

4 Q. Do you know Kristin P. Reisinger, Rassing, or
5 Reisinger?

6 A. Who? Repeat that name.

7 Q. Reisinger ask, Reisinger. Kristin P. Reisinger.

8 A. No.

9 Q. Do you know Michael Ferson?

10 A. Yes.

11 Q. Do you know Shelly Mankey?

12 A. Yes.

13 Q. Do you know William Stickman?

14 A. Yes.

15 Q. Do you know Frank Chirico?

16 A. No.

17 Q. Do you know David McCoy?

18 A. Is this gentleman a captain?

19 Q. I'm not certain myself.

20 A. Because if he is, that's who took my statement about
21 the incident with the State troopers.

22 Q. What year?

23 A. 2000, 2001, late 2001. Filed several complaints with
24 the Pennsylvania State troopers. He handled one from 1998 to
25 2001.

1 Q. Have any of these defendants who you just identified,
2 you do know retaliated against you in any way during the
3 relevant time frame?

4 A. Yes.

5 Q. In what way have you been retaliated against by the
6 specific defendant?

7 MR. BRADLEY: Your Honor, I think that's a little
8 too broad.

9 THE COURT: How would you suggest it?

10 MR. BRADLEY: In terms of the areas that the Court
11 has permitted evidence, regarding interference with legal
12 property, things of that nature.

13 MR. JACOBS: I informed him of what area.

14 THE COURT: Okay, fine. Well, then, why don't you
15 focus your inquiry; why don't you rephrase your question?

16 MR. JACOBS: Okay.

17 BY MR. JACOBS:

18 Q. Jeffrey Beard -- can you hear me?

19 A. Yes.

20 Q. In what way has Jeffrey Beard ever retaliated against
21 you?

22 THE COURT: Okay. Could you keep it within the time
23 frame.

24 MR. JACOBS: I informed him to focus on a specific
25 time.

1 BY MR. JACOBS:

2 Q. Are you aware that we're talking about the specific
3 time frame from 2003 beforehand?

4 A. Okay. From, from what year?

5 Q. No later than 2003.

6 A. Oh. That's when I left.

7 Q. That's when you left?

8 A. That's when I left, February -- yeah, February, 2003.

9 Q. Okay.

10 A. I came in 1998 and left February of 2003, and at that
11 time I personally talked to State representatives in the
12 presence in the RHU law library with Jeffrey Beard, and as a
13 result of that conversation about the conditions of
14 confinement, my legal property being stolen, my legal mail
15 being tampered with, me being physically assaulted, he turned
16 to, if I'm not mistaken, it was Superintendent Price at that
17 time, and he told him, in front of State representative Deana
18 Washington, look into this matter.

19 And instead of the retaliation, and harassment and
20 intimidation ceasing, it was turned up.

21 Q. By "turned up", you mean?

22 A. Let's say, immediately after I had this conversation
23 with Jeffrey Beard face-to-face, and State representative
24 Deana Washington, some of her aides in the law library in the
25 RHU, in the 2002, exactly, the month was October, I was sent

1 down state by that extent I was sent downstairs to A-1 and
2 after that I was placed in a hard cell with no furniture,
3 four-point restraints, after I filed a grievance.

4 Q. How frequent -- how frequent is it that adverse actions
5 are taken against you by prison officials for filing a
6 grievance?

7 MR. BRADLEY: Excuse me, Your Honor, "by prison
8 officials" doesn't confine it to this case.

9 THE COURT: He needs to focus on his time at SCI,
10 just phrase your questions with respect to his time at FCI
11 Pittsburgh, and if he can frame in his response the period of
12 time that was involved, and if he has an identification of any
13 of the prison officials.

14 BY MR. JACOBS:

15 Q. Do you remember what prison officials were involved in
16 you exhausting the grievance procedure --

17 A. Yes.

18 Q. -- during the relevant time frame? During the relevant
19 time frame.

20 A. From, from 1998 to 2003, the defendant, Carol Scire,
21 she had several positions at this time; notary, grievance
22 coordinator, and I was sending notarized documentation to a
23 Federal Judge and a judiciary chairman by the name of John
24 Connors, Jr. in Washington DC. She told me she was informed
25 by the Defendant Stickman that she cannot no longer notarize

1 documents to Court officials, because the majority of my
2 documentation was notarized. And for some reason, one day in
3 2002, she said, I can no longer notarize your documents to
4 Court officials, on the orders of Defendant Stickman.

5 Q. And Miss Scire's capacity as grievance coordinator, do
6 you remember having any interactions with her trying to file
7 grievances, and appeal grievances, things of that nature?

8 A. I had Defendant Carol Scire personally come to my cell
9 and tell me that I just need to stop filing grievances; this
10 is frivolous.

11 Q. Well, how -- as grievance coordinator, she processed
12 the grievances; correct?

13 A. Yes.

14 Q. Did you ever have any difficulty with her processing
15 the grievances?

16 A. Yes. I've had her bring my grievance back to my cell,
17 throw it in my cell.

18 MR. BRADLEY: Your Honor --

19 THE COURT: Just one moment. There's an objection.

20 MR. BRADLEY: There's no claim in this case that
21 Mr. Jacobs had his grievance process interfered with.

22 MR. JACOBS: Yes, I did. Yes, there is, Your Honor.

23 THE COURT: Okay. You can continue, and I'll direct
24 the jurors to disregard it if it's -- if that's not part of
25 the retaliation.

1 BY MR. JACOBS:

2 Q. You can continue, Mr. Edwards.

3 A. Yes. She personally stuck my grievance with a
4 rejection note on it, stating, "rejected". If I was sleeping,
5 sometime she would wake me up and tell me, I'm not processing
6 this. These are some of the documents that were taken out of
7 my cell, which I have a grievance right here in front of me
8 on.

9 MR. BRADLEY: Your Honor --

10 A. From 1998 to 2000, these grievances, grievance
11 response, some requests, request of staff to her, Defendant
12 Stickman, were taken out of my cell. I have a copy of the
13 grievance that I filed on this situation right in front of me.

14 Q. I want to draw your attention to experiences with the
15 misconduct system. Are you familiar with the misconduct
16 system in the Department of Corrections?

17 A. Yes.

18 Q. At SCI Pittsburgh?

19 A. Yes.

20 Q. During the relevant time frame?

21 A. Yes.

22 MR. BRADLEY: Excuse me, Your Honor.

23 A. I refuse to participate --

24 THE COURT: Excuse me, we have an objection.

25 MR. BRADLEY: This is beyond the scope of what this

1 witness was offered for.

2 THE COURT: Okay. Why don't we take a brief recess.
3 We'll excuse the jury.

4 (Whereupon, jury retired.)

5 THE COURT: Please be seated.

6 When we have a more extended discussion, we need to
7 excuse the jury. Ordinarily, I would do it at sidebar, but
8 because of the circumstances where the counsel and the
9 plaintiff are sitting at the tables, we can't do that.

10 MR. BRADLEY: My understanding of the proffer of
11 this witness is that he was going to testify as to, in order
12 to establish supervisor liability, prior incidents involving
13 the matters outlined by the Court that occurred at SCI
14 Pittsburgh involving these defendants in the relevant time
15 frame.

16 THE COURT: So, let's ask Mr. Jacobs, how would this
17 conduct tie in with that; okay?

18 MR. JACOBS: Just yesterday, Your Honor, you said I
19 could offer testimony, direct testimony from witnesses who had
20 experiences with the 801, 801 misconduct procedure, to show a
21 connection between the supervisory officials and --

22 THE COURT: The question is whether the misconducts
23 relate to legal materials being taken, or retaliation in
24 connection with the actions of inmates trying to exercise
25 their First Amendment rights.

1 MR. JACOBS: I'm going to ask Mr. Edwards, has he
2 ever been retaliated against through the misconduct system.

3 THE COURT: You have to tie it in with that.

4 MR. JACOBS: It will be, Your Honor.

5 THE COURT: Okay. See, a misconduct, he receives a
6 misconduct for exercising their First Amendment rights, and
7 other defendants have participated in that, or goes up the
8 chain, and they have learned about it in the system, then,
9 that is the type of evidence that I did say could be
10 introduced.

11 You'll have fair opportunity to cross examine, and
12 your witnesses will be able to testify about any of these
13 matters.

14 Okay. Please rise for the jury.

15 Before the jury comes in, just so you know, we can't
16 go off in collateral matters without getting confusion to the
17 jury. So, try to focus your questions to the issues that are
18 in this case.

19 MR. JACOBS: Okay.

20 (Jury is seated.)

21 THE COURT: Please be seated.

22 DIRECT EXAMINATION CONTINUES

23 BY MR. JACOBS:

24 Q. Mr. Edwards --

25 A. Yes.

1 Q. -- has the misconduct system ever been used as a
2 retaliatory tool?

3 A. Yes.

4 Q. For your exercising a right?

5 A. Yes.

6 Q. In what way?

7 A. I was denied to bring documentation, evidence into the
8 hearing examiner. The hearing examiner, I believe, was
9 Michael Ferson. The defendant, Michael Ferson, would direct
10 the correctional officers escorting you that if you was in the
11 RHU, one, you couldn't call a witness from the RHU who
12 witnessed an event; 2, you couldn't bring any legal
13 documentation. So, basically you couldn't even put up a
14 defense.

15 Q. Did you ever challenge the actions of Mr. Ferson for
16 denying you witnesses?

17 MR. BRADLEY: Excuse me, Your Honor. Whether or not
18 this individual challenged these actions is not relevant to
19 the matters.

20 THE COURT: I'll permit the question as to whether
21 he challenged it.

22 BY MR. JACOBS:

23 A. Yes.

24 Q. How did you challenge it?

25 A. Through the grievance system. And I was told you

1 cannot file a grievance pertaining to a misconduct. When in
2 fact, I wasn't grieving the misconduct, I was grieving the
3 proceedings of the misconduct hearing.

4 Once he gave me his what they call rationale for
5 finding me guilty, I couldn't understand the handwriting, so I
6 grieved that.

7 THE COURT: I think you need to focus on who the
8 individuals were involved.

9 MR. JACOBS: He said the hearing examiner was
10 Ferson, Defendant Ferson.

11 BY MR. JACOBS:

12 Q. Did you ever appeal a misconduct?

13 A. Yes.

14 Q. Who did you appeal it to?

15 A. Superintendent.

16 Q. Did you ever appeal a misconduct to the PRC?

17 A. Yes.

18 Q. Did you ever get any type of relief?

19 A. None.

20 Q. Do you remember any of the individuals who were
21 involved in the appeal process of misconduct at SCI
22 Pittsburgh?

23 A. Yes. Defendant Stickman.

24 Q. At SCI Pittsburgh?

25 A. Yes. He's on the documents that was taken out of my

1 cell. Request to staff, to the executive staff. I would like
2 to get this on record, if the Court would allow it.

3 MR. BRADLEY: Excuse me, Your Honor.

4 THE COURT: He just has to answer the questions.

5 THE WITNESS: I said, questions I'm being asked,
6 Your Honor, can be verified through documentation.

7 THE COURT: Well, just answer the question.

8 THE WITNESS: Yes, sir.

9 THE COURT: The issues with respect to this witness
10 are not on trial today, so those documents are not here today.
11 They are not direct -- they are not evidence in this case.

12 So, he needs to answer the questions, and his
13 answers are the evidence that can be considered.

14 THE WITNESS: I said, yes.

15 BY MR. JACOBS:

16 Q. Okay. She said, just focus -- your answers are the
17 evidence, you know, so --

18 A. Okay. And I said, yes, to your question.

19 MR. JACOBS: No further questions at this time.

20 CROSS EXAMINATION

21 BY MR. BRADLEY:

22 Q. Mr. Edwards, my name is Scott Bradley. I don't know if
23 you can see me. I just raised my hand.

24 A. I can see you.

25 Q. I'm representing the defendants in this case, and I

1 just have a few quick questions for you.

2 You indicated that in SCI Pittsburgh you were in A-100
3 and A-200?

4 A. Yes. From 1998 to February 3rd. I came October, '98.

5 Q. Were you ever on the same unit as Mr. Jacobs?

6 A. I have no idea.

7 Q. Were you ever on A-300?

8 A. Yes, but not at the time period you're talking about.

9 Q. Okay. Did you witness -- do you know what Mr. Jacobs
10 is claiming in this case?

11 A. Yes.

12 Q. Did you witness any of those events?

13 A. Yes. I, I suffering myself from them.

14 Q. Excuse me?

15 A. I suffer it myself from them.

16 Q. Did you witness any of the actions that were taken
17 against Mr. Jacobs in this case?

18 A. Pertaining to the theft of his legal property or
19 whatever?

20 Q. Yes.

21 A. No, sir. I -- from this picture that I'm looking at
22 now of Mr. Jacobs, if he was in the RHU at the relevant times,
23 from '98 to 2003, you know, we talking about, we talking about
24 ten years ago.

25 Q. Mr. Jacobs is claiming in September of 2000, while he

1 was on A-300, that some property of his was taken. Did you
2 witness that?

3 A. A-300?

4 Q. A-300.

5 A. Or A-2 -- or A-200?

6 Q. A-300.

7 A. A-300 is, that's the old death row, the old SMU. I was
8 on A-1 and A-200.

9 Q. Okay. So, you did not witness any of the events that
10 Mr. Jacobs is complaining about in this trial; is that
11 correct?

12 A. About him having anything taken from him personally;
13 personally, no.

14 Q. No, you did not witness those things?

15 A. No.

16 Q. Thank you.

17 MR. BRADLEY: That's all I have, Your Honor.

18 MR. JACOBS: No redirect.

19 THE COURT: Okay. We're going to take another brief
20 recess, then. Please rise; excuse the jury.

21 (Whereupon, court recessed at 10:30 a.m.)

22 THE COURT: Okay. This witness can be excused. I'm
23 going to say, in the future -- somebody keeps walking back and
24 forth, one of the guards. I don't know if there's a need for
25 that, or why that person keeps doing it, but for the next

1 witnesses, if they could just stay where they are, that would
2 be appropriate.

3 MR.WILLIG: Okay, Your Honor.

4 Randy, are you there? This witness is done.

5 Can you bring in the next witness? I think it's
6 David Smith. And if possible, can the CO's not walk across
7 the screen? If they could just stay where they are, if
8 possible. Thanks.

9 THE COURT: You can all be seated while we're
10 waiting.

11 Could the defendants' counsel please come back in.

12 MR. BRADLEY: Your Honor, one of the defendants have
13 brought a concern to my attention. Apparently Mr. Grote, who
14 was called as a potential witness by Mr. Jacobs, when he walks
15 past the defendants, he's making certain remarks to them that
16 they are finding very offensive.

17 THE COURT: I'll address him when he comes back in.

18 MR. BRADLEY: Thank you.

19 THE COURT: That's inappropriate, if he's doing
20 that.

21 Okay. I'm going to order the colloquy that was
22 outside the presence of the jury with the witness,
23 Mr. Edwards, to be transcribed, and I'm going to have that
24 done at the cost of the defendants at this time, and I'll
25 re-assess whether the costs should be allocated differently at

1 an appropriate time.

2 MR. BRADLEY: Your Honor, with respect to this
3 witness, he was never at SCI Pittsburgh.

4 THE COURT: Why don't we ask him his name. Could
5 the witness -- this is Judge Conti.

6 THE WITNESS: Hello, ma'am.

7 THE COURT: Hi. What is your name, sir?

8 THE WITNESS: Mr. David Smith.

9 THE COURT: David Smith?

10 THE WITNESS: Yes ma'am.

11 THE COURT: Okay. Were you ever at FCI Pittsburgh?

12 THE WITNESS: No, ma'am, I wasn't.

13 THE COURT: Okay. Mr. Jacobs --

14 THE WITNESS: No, ma'am, I haven't. I've never been
15 to SCI Pittsburgh.

16 THE COURT: Okay.

17 * * * * *

18 DAVID SMITH, a witness herein, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION (out of the presence of the jury)

21 BY MR. JACOBS:

22 Q. Have you ever had any type of dealings or interactions
23 with any of the following persons: Jeffrey Beard; do you know
24 that name?

25 A. Ah, yes, I do. Pertaining to my situations, as far as

1 for me being assaulted previously at the prior Institution
2 where I was transferred from SCI Huntingdon. I had spoken
3 upon good faith to Mr. Jeffrey Beard on multiple occasions,
4 twice, and in 2008 of January 7th pertaining to my being
5 physically abused by the corrections officers at --

6 THE COURT: Just a minute.

7 Mr. Grote, you're returning here to the courtroom.
8 You were previously offered as a witness.

9 The Court has been advised you're making
10 inappropriate comments in the courtroom to the defendants.
11 So, if you are -- and I have seen you personally making faces,
12 and you know, during testimony. If you're here, you know --
13 and I would direct this to anyone else in the courtroom as
14 well, you need to maintain the appropriate decorum when you're
15 here.

16 MR. GROTE: Understood.

17 THE COURT: We don't want any disruptions.

18 THE WITNESS: The reason why I'm --

19 THE COURT: Have we lost the feed?

20 Q. Did you hear me?

21 A. Yes. I want to apologize. The reason why I'm making
22 faces --

23 THE COURT: I wasn't talking to you. I was not
24 talking to you.

25 THE WITNESS: I humbly apologize.

1 THE COURT: No, it was someone else in the
2 courtroom. It has nothing to do with you.

3 THE WITNESS: I apologize, Judge.

4 THE COURT: I just wanted to know the time frame you
5 were speaking with Mr. Beard. Did I hear you correctly, was
6 that 2007?

7 THE WITNESS: It was 2007 of January 4th, which was
8 a Friday, at approximately 9:15 a.m., while he was making a
9 particular round.

10 BY MR. JACOBS:

11 Q. That was the second time you talked to him?

12 A. No, sir. That was the first time. That was the
13 initial, the first and initial time I had verbally and
14 informally spoken to Mr. Beard.

15 Q. Have you ever written to Mr. Beard prior to that time?

16 A. I wrote to Mr. Beard, but I don't know whether the mail
17 had actually got to his destination, because they were
18 actually stealing mail off -- the mail was being pocketed
19 about the grievances, and mail and grievances never making
20 their destination pertaining to inside the department as far
21 as towards the griever and coordinator, or to the streets
22 civilian wise.

23 I did write, I did write upon good faith, but I never
24 received a response.

25 Q. And with, what time frame are you talking about?

1 A. I had wrote him pertaining to a situation before I had
2 actually spoke to him physically pertaining to an assault that
3 occurred 3 assaults that occurred in 2006 which was on
4 May 12th, 2006, which was on a Friday, at approximately
5 2:50 p.m. I wrote him pertaining to an October 8th incident
6 and also and October 11th incident also.

7 Q. Of what year?

8 A. 2006.

9 Q. How long have you been incarcerated?

10 A. Unfortunately, I've been incarcerated now going on five
11 years. Since 2004, February 28th, 2004.

12 Q. So, you were never in the Department of Corrections
13 prior to 2004?

14 A. Prior to 2004? This is my second State correctional
15 confinement. I was incarcerated 2000 -- I mean, excuse me,
16 1997. From 1997 up until 2002. 2000, I maxed out, and then,
17 in 2004, unfortunately, I was re-arrested.

18 Q. From 1997 to 2000, you were in the Department of
19 Corrections?

20 A. Yes, I was.

21 Q. At what prison?

22 A. SCI Mahanoy, Frackville.

23 Q. And in that time frame, had you ever interacted with
24 defendant, excuse me, Jeffrey Beard? From the first, from the
25 first State time; you did?

1 A. No, I haven't.

2 Q. I'm going to give you a list of names. I want you to
3 tell me if you recognize any of these names.

4 Thomas McConnell, Carol Scire.

5 A. No, sir.

6 Q. Gregory Giddens?

7 A. No, sir.

8 Q. Allen Lynch?

9 A. No, sir.

10 Q. Kristin P. Reisinger?

11 A. No, sir.

12 Q. Michael Ferson?

13 A. No, sir.

14 Q. Shelly Mankey?

15 A. No, sir.

16 Q. William Stickman?

17 A. No, sir.

18 Q. Frank Chirico?

19 A. No, sir.

20 Q. David McCoy?

21 A. No, sir.

22 Q. Okay.

23 THE COURT: Okay. Was Mr. Smith one of the ones
24 that refused to leave his cell?

25 MR. JACOBS: Yes, Your Honor.

1 THE COURT: Why don't we just ask him about that,
2 please.

3 BY MR. JACOBS:

4 Q. Yesterday, we were advised that you refused to
5 participate in this trial. Is that true?

6 A. That's not true, as far as pertaining to me refusing.
7 I asked -- when I received the notification per the Courts
8 that we were going to come over for a video conference, the
9 date that was stated officially on the document was
10 October 11th.

11 Now, pertaining to my environment as far as here at the
12 SMU, SCI Camp Hill SMU, I was trans -- like I said before, I
13 was transferred here. I was assaulted on multiple occasions.
14 I actually witnessed assaults, and actually witnessed
15 individuals being starved to death, you know, if I can say
16 that myself, by not getting trays.

17 Since I've been here I've been dealing with these
18 injuries, as far as dealing with my shoulders, Your Honor. I
19 have torn ligaments in my fingers from during the cell I in
20 evidence referred whether he I got offer think I stated
21 respectfully if lawyers wasn't present I was never notified
22 that I would like to be taken back to my cell because the date
23 on the documents stated the 11 and it was 5 days prior I
24 didn't know what was going on but I never tell lie rebelled
25 against coming over to testify within the realm of being on

1 notice that it was for the 11 of November.

2 Q. So, you did come over to the conference room?

3 A. I came over to the conference room an upon me being
4 escorted back from the conference room I was assaulted. By an
5 officers CO huh beer as I was walking back being escorted back
6 and also on the compound an also in my cell.

7 Q. What reasons?

8 THE COURT: Excuse me, just get the date. Was that
9 yesterday?

10 BY MR. JACOBS:

11 Q. Was that yesterday?

12 A. Yes, ma'am. I was assaulted yesterday on my way back
13 from this particular room here, this particular area.

14 Q. In regards to this case? I mean -- well, in regards to
15 you coming to the conference room for this case.

16 A. I would say it, it amounts to that. I would say that.
17 Because all I had asked, respectfully, was to take me back to
18 my cell. I didn't know what was going on, and the date and
19 the time was November 11th, and the time was 13:30, which was
20 1:30 p.m., and here I am, 9:30. I didn't know what was going
21 on. But they were actually telling me I would have to stay in
22 front of the Judge. I didn't know who the Judge was.

23 Like I said, upon me being escorted back, I was
24 assaulted, which multiple witnesses had seen this particular
25 individual officer assault me. So, I'm sitting up here, now

1 with re-agitated injuries and also injuries on my head where
2 he pushed my head into the wall.

3 But I never refused to come over. I was already over
4 here. But I didn't know, gentleman, ma'am, what was going on,
5 or what was about to occur. So I'm still waiting to see
6 medical now for the injuries, sustained injuries.

7 THE COURT: You have any questions?

8 MR. BRADLEY: No, Your Honor.

9 THE COURT: Okay. Mr. Smith, this case involves
10 incidents happening at FCI Pittsburgh in the year 2003, and
11 your -- you don't have any knowledge about any of the
12 individual defendants in this case, and your communications
13 with Jeffrey Beard are later than that. And so, we're not
14 going to need your testimony for this case. But we have a
15 record of everything you have said here today. So, thank you
16 for coming. But you will be excused at this time.

17 THE WITNESS: Thank you very much.

18 THE COURT: Okay. Thank you.

19 MR. WILLIG: Randy this is rob. Is that it for Camp
20 Hill; right? That's it for you guys. Thanks a lot. I
21 appreciate it.

22 OFFICER: Thank you.

23 THE COURT: Okay. Who will be the next witness. Do
24 we have anyone else from a remote site at this time, or should
25 we take back up with the defendant that was testifying

1 yesterday? We have about 15 minutes.

2 MR. BRADLEY: The next video witness is Gary Banks,
3 and I believe he's set for 1:30.

4 So, we can pick up with Miss Mankey.

5 MR. WILLIG: Between 1:00 and 3:00, he's available.

6 THE COURT: Okay. We won't be back here until 1:30.
7 So, we'll try to start right around that time. Okay. If the
8 witness, if you could come and retake the witness stand. And
9 I'm going to direct that that last testimony from Mr. Smith,
10 also that transcript is going to be ordered at the cost of the
11 defendants.

12 MR. BRADLEY: Understood, Your Honor.

13 THE COURT: Okay. Please rise for the jury.

14 (Jury is seated.)

15 THE COURT: Please be seated. The witness is
16 instructed that you remain under oath.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Okay. When we left off yesterday,
19 remember, this is one of the defense witnesses. It's a
20 defendant.

21 And Mr. Jacobs, you were questioning on cross
22 examination.

23

24

25

* * * * *

SHELLY MANKEY, a witness herein, having
been previously duly sworn, testified further as follows:

CROSS EXAMINATION CONTINUES

BY MR. JACOBS:

Q. If I recall correctly, Miss Mankey, we were discussing
the factors that you consider in making a decision denying my
appeal.

You remember that testimony?

A. Yes.

Q. Your review at the PRC, at the PRC level is to ensure
that -- to review whether or not the procedures at the
misconduct hearing were in accordance with the law?

A. We review whether the -- whether there were any
procedural errors of, um, the, like, um, say whether the
misconduct was heard in a timely manner, things like that.

We do not re-hear the misconduct or re-investigate the
misconduct.

Q. So, if you look at Section C, where it says, the
evidence was insufficient to support the decision?

A. Yes, sir.

Q. Do you see that?

A. Um-hum.

Q. How do you determine whether a person received a fair
hearing, if you don't review the evidence?

1 A. It's not up to us to review the evidence; it's up to
2 the hearing examiner to do that.

3 Q. But as a ground for appeal, a prisoner can raise that
4 the evidence was insufficient. So at that stage a prisoner
5 can identify why he feels that the grounds were insufficient,
6 the evidence was insufficient to support being sanctioned;
7 correct?

8 A. He can ask that.

9 Q. Excuse me?

10 A. Yeah, correct.

11 Q. Is that correct?

12 A. He can ask, yes.

13 Q. And so, you're saying that even though a prisoner can
14 ask that a prisoner can allege that the evidence was
15 insufficient, you're not really even reviewing whether or not
16 the evidence was insufficient?

17 A. We review whether the hearing examiner found it
18 sufficient or not.

19 Q. Without reviewing the evidence?

20 A. The hearing examiner reviews the evidence.

21 Q. Okay. The hearing examiner reviews the evidence;
22 right?

23 A. That's his job. We do not re-hear the hearing.

24 Q. Okay. And I'm -- and a prisoner appeals, challenging
25 his review of that evidence, and he appeals to the PRC and

1 says, well, the hearing examiner didn't properly review this
2 evidence, and he then comes to you, as the PRC member, and
3 says, well, the evidence was insufficient, the evidence is not
4 what it appears to be, and I would like further review of this
5 particular evidence.

6 At that point you're saying that you don't review the
7 evidence?

8 A. It's not the job of the hearing --

9 Q. Yes, or, no.

10 A. It's not the job -- no.

11 MR. BRADLEY: Your Honor, can she be allowed to
12 answer the questions?

13 MR. JACOBS: It's a, yes, or, no, question, Your
14 Honor.

15 THE COURT: Just a second.

16 She can answer, yes, or, no. If there's a short
17 addition, you can do it; otherwise, it's up to you on redirect
18 to have her fully explain her answer.

19 BY MR. JACOBS:

20 Q. You also stated yesterday that a prisoner is entitled
21 to -- as part of the review, a prisoner is entitled to the
22 reason why you feel as though that he doesn't qualify for the
23 ground that he alleged in his appeal.

24 So, if I say that the evidence was insufficient, you
25 respond that the evidence was not insufficient, that I'm

1 entitled to a reason why you feel that the evidence was not,
2 was not insufficient?

3 A. I believe I stated that we answer the three things that
4 are on the top of the appeals thing; A, B and C.

5 Q. Okay. But as part of that, do you give a reason why
6 you feel that the prisoner has no grounds for appeal?

7 A. Usually within the answers of A, B and C.

8 Q. Within them. So, is your answer confined to A, B and
9 C, or do you tailor your answer to a specific circumstance?

10 A. Within A, B and C, those are the only things we can
11 answer. As PRC Appeals Committee, the only things we can
12 answer are within those things, or within specifically those
13 things.

14 Q. Okay. I'm trying to get to, when you say, "within".
15 If I raise a claim relating to A, in addition to, in addition
16 to you responding that I don't qualify for A, do you say, you
17 don't qualify for A because blah, blah, blah, blah, blah, as
18 it relates to this specific misconduct?

19 A. It may state, we may state, for example, there was no
20 procedural error found per ADMIN DC-801.

21 Q. And that's it?

22 A. And we may, depending on what you put as -- what the
23 inmate stated as the procedural error he thinks was the
24 problem, we probably would state, you stated this procedural
25 error. We did not find that that procedural error is found in

1 this.

2 Q. But it doesn't -- the document, the decision form does
3 not reflect what you consider, or why you believe that there
4 was no procedural error; there was insufficient evidence, or
5 so forth or so on?

6 A. Is there a question in that? I didn't, I don't --

7 Q. It's not on the form.

8 THE WITNESS: Is there a --

9 THE COURT: If you don't understand the question,
10 just say you don't understand it.

11 BY MR. JACOBS:

12 A. I don't understand the question.

13 Q. The things that you consider in making this decision --

14 A. Um-hum.

15 Q. -- is not written on the appeal decision form?

16 A. (Nods.)

17 Q. Outside of A, B and C?

18 A. The only things we're permitted to consider by the
19 Appeals Committee, PRC Appeals Committee, the only things that
20 we're permitted to consider are A, B and C.

21 Q. Okay. I understand that. The things that you consider
22 in making a decision is not written on that decision form?

23 A. Um-hum.

24 Q. Is that correct?

25 A. We --

1 Q. Yes, or, no?

2 A. That form is used; yes.

3 Q. Thank you.

4 It also states that the procedures were, the procedure
5 in Part A, the procedures employed were contrary to law.

6 You see that?

7 A. Yes.

8 Q. So, if a prisoner makes an appeal and says that what
9 was done was illegal, you don't review that either?

10 A. That's law of Administrative Directive 801.

11 Q. But it says, the procedures employed were contrary to
12 law, comma, Administrative Directive 801, comma, or the ICU
13 consent decree.

14 Do you see that; do you see that?

15 A. Yes.

16 Q. And it says, "or". So, it gives a line of areas that
17 are to be considered?

18 A. Yes.

19 Q. Thank you.

20 Miss Mankey, I'm showing you what's going to be tagged
21 as Plaintiff's Exhibit No. 16.

22 Do you recognize that form?

23 A. It looks like a witness statement.

24 Q. Is this one of the statements that you review as part
25 of the grievance -- I mean, misconduct appeal?

1 A. It might have been with the misconduct, it might not
2 have. I don't remember.

3 Q. I'm saying that, you see that misconduct number right
4 over here in the right-hand corner?

5 A. Yes, I see it.

6 Q. Does that misconduct number correspond with the
7 misconduct in question?

8 A. Yes, it does.

9 Q. And you also stated yesterday that you, you review
10 misconduct-related documents; correct?

11 A. I said we review the misconduct.

12 Q. Just the misconduct?

13 A. Yes.

14 Q. You don't review the witness lists?

15 A. It's not necessarily -- this statement wouldn't
16 necessarily be with it.

17 Q. Would the witness form?

18 A. Yes, the witness form is usually with it, if there is a
19 witness form.

20 Q. But would you agree with me that this is a
21 misconduct-related document?

22 A. Ah, yes.

23 Q. And that this misconduct-related document was related
24 to the specific misconduct in question?

25 A. Looks like the same number.

1 Q. You, you want to check to make sure?

2 A. Yes.

3 MR. BRADLEY: Your Honor, we'll stipulate that it's
4 the same number.

5 THE COURT: Okay. Thank you.

6 BY MR. JACOBS:

7 Q. Do you see anywhere within that document where I allege
8 that my constitutional rights were being violated?

9 A. Yeah.

10 MR. BRADLEY: Your Honor, I'll stipulate that's what
11 the document says.

12 BY MR. JACOBS:

13 A. I do believe that's what it says.

14 Q. Do you agree with me that prisoners are allowed to have
15 legal documents?

16 A. They are allowed to have their own legal documents.

17 THE COURT: Okay. It's now 11:00, and I mentioned,
18 we have an extended recess today from 11:00 to 1:30.

19 MR. JACOBS: I'm almost done.

20 THE COURT: Are you almost done; you want to ask one
21 more question?

22 MR. JACOBS: Just a couple; not more than three,
23 four minutes.

24 THE COURT: Okay.

25 BY MR. JACOBS:

1 Q. You stated yesterday that you normally put on a
2 misconduct, on a rationale form why the appeal is being
3 denied.

4 A. Again, we answer A, B and C.

5 Q. Did you testify yesterday that you normally put on the
6 form why the appeal is being denied?

7 A. Yes.

8 Q. Okay. And do you recognize that form?

9 A. Yes. It's a witness form.

10 Q. And this is going to be marked as Plaintiff's Exhibit
11 No. 17.

12 Do you agree with me, that this witness form --

13 A. Yes.

14 Q. -- corresponds with --

15 A. Yes.

16 Q. -- the misconduct in question?

17 A. (Nods.)

18 Q. And this witness form, I requested that Mr. Banks be
19 produced at the misconduct hearing?

20 A. Yes.

21 Q. To verify that the documents were not his?

22 A. Yes.

23 Q. And that they belonged to me?

24 A. Yes, that's what you requested.

25 Q. And do you think that if this testimony would have been

1 admitted to disclaim ownership, and me claiming ownership,
2 would that have raised a question as to whether the 801 was
3 violated, or whether a law was being violated?

4 A. That's up to the hearing examiner to decide. He
5 investigates.

6 Q. I'm asking you, do you think that's relevant?

7 A. I don't determine that. I can't determine that. It's
8 up to the hearing examiner to investigate when he investigates
9 the misconduct, not the PRC.

10 Q. You don't review -- even if he's violating law, you
11 don't review that?

12 A. No. The hearing examiner doesn't --

13 Q. Answer the question, please.

14 A. No.

15 Q. You don't -- even if he violates the law, you don't
16 review that?

17 A. No, we do not review that.

18 Q. If he violates policy, you review that?

19 A. Procedural errors according to the DC ADMIN 801, we
20 review stuff like that.

21 Q. Under the DC-801, prisoners can call witnesses in
22 support in their defense at a misconduct; yes, or, no?

23 A. Yes.

24 Q. Thank you.

25 And you sustained a decision against me as part of a

1 practice; didn't you?

2 A. Not as part of a practice, no.

3 Q. You did not review any type of evidence that I raised,
4 any witnesses I tried to produce, or anything that I tried to
5 show that I was, I was being singled out; did you?

6 A. We reviewed --

7 Q. Yes, or, no.

8 A. -- the misconduct.

9 Q. Yes, or, no.

10 A. We reviewed the misconduct.

11 Q. Yes, or, no.

12 A. Yes, we reviewed it.

13 Q. You did review the evidence?

14 A. We reviewed the misconduct as the PRC Appeals
15 Committee, as we were supposed to do, yes.

16 Q. Listen to the question. I'm going re-state the
17 question.

18 You did not review any of the evidence, you did not
19 review my request for the witness, and you did not review my
20 claim that I was being singled out and my constitutional
21 rights were being violated; correct?

22 A. Those are several questions, and I would answer
23 differently to different parts of that question.

24 Q. Okay. Did you review me not being able to have a
25 witness?

1 A. Yes, we reviewed the witness -- the denial of the
2 witnesses.

3 Q. And did you review what effect the denial of that
4 witness had on the hearing?

5 A. We reviewed you not having a witness. I don't --

6 Q. Did you review --

7 A. No, we didn't review that fact.

8 Q. Did you review my claim that my constitutional rights
9 were being violated?

10 A. No.

11 Q. Did you review my claim that the evidence was
12 insufficient?

13 A. Yes.

14 Q. And earlier you testified that you don't review that;
15 you said you don't review that?

16 A. We review whether the hearing examiner had sufficient
17 evidence to find for guilt, yes.

18 THE COURT: Mr. Jacobs, it's now been five minutes,
19 and I told you that we have to take this extended recess.

20 Do you have any more questions?

21 MR. JACOBS: No further questions, Your Honor.

22 THE COURT: Okay. When we come back, then, we will
23 have another plaintiff witness, and then, this witness can be
24 recalled for redirect.

25 Please rise for the jury.

1 (Whereupon, jury retired.)

2 THE COURT: We'll be in recess until 1:30.

3 (Whereupon, court recessed at 11:05 a.m.)

4 * * * * *

5 (Whereupon, court reconvened.)

6 THE COURT: Please be seated.

7 We're going back to the defendant's -- excuse me,
8 the plaintiff's case now, and this next witness is one of the
9 plaintiff's witnesses.

10 Would the clerk please swear in the witness.

11 MR. BRADLEY: Yes.

12 * * * * *

13 GARY BANKS, a witness herein, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. JACOBS:

17 Q. Good morning, Mr. Banks. Can you hear me?

18 A. Yes, sir, I can hear you.

19 Q. Could YOU state your name for the record.

20 A. Name is Gary Banks.

21 Q. Are you currently incarcerated?

22 A. Yes, sir.

23 Q. Where are you currently incarcerated at?

24 A. Graterford SSMU.

25 Q. Was there a time when you were incarcerated at

1 SCI Pittsburgh?

2 A. Yes, in the LTSU.

3 Q. From what time period were you incarcerated at

4 SCI Pittsburgh?

5 A. From November 30th to, um, June 20th, 2004.

6 Q. From November of what year?

7 A. November of 2000.

8 Q. I'm going to read a list of names off to you. I want
9 you to tell me if you recognize any of these names; okay?

10 A. Yes.

11 Q. Jeffrey Beard.

12 A. I know Jeffrey Beard, yes.

13 Q. Thomas McConnell.

14 A. Thomas McConnell?

15 Q. Yeah.

16 A. I don't know him by that name, no.

17 Q. Carol Scire.

18 A. Yeah. That's the grievance coordinator.

19 Q. Gregory Giddens.

20 A. Yeah. That's the Lieutenant.

21 Q. Allen Lynch.

22 A. Yeah. He was a sergeant up there.

23 Q. Robert Bittner.

24 A. Robert Bittner?

25 Q. Yes. Yes, sir.

1 A. Yeah. That's Chief Hearing Examiner.

2 Q. Captain Simpson.

3 A. Captain Simpson; don't recognize him.

4 Q. Kristin Reisinger, or Reisinger.

5 A. Never heard that name.

6 Q. Michael Ferson.

7 A. Yeah, I know Michael Ferson; Hearing Examiner.

8 Q. Shelly Mankey.

9 A. Nah. No, I don't recognize that name.

10 Q. William Stickman.

11 A. I know Stickman, yeah.

12 Q. Frank Chirico.

13 A. Yeah. I know Frank Chirico, yeah.

14 Q. David McCoy.

15 A. David McCoy?

16 Q. David McCoy.

17 A. No.

18 Q. You would have what, been at SCU Pittsburgh on
19 September 16th, 2003; correct?

20 A. Correct. That's correct.

21 Q. Do you recall having any interactions with Gregory
22 Giddens on that day?

23 A. Yes. Gregory Giddens came do my cell and told me,
24 didn't I tell you, go mind your own business. I asked him
25 what he was talking about. He said he confiscated Andre

1 Jacobs' property and found declarations with my signatures on
2 them. And I better learn to mind my business, or he will get
3 the guards to assault me again. And stop helping prisoners
4 out in their legal matters.

5 Q. He told you to stop helping prisoners with their legal
6 matters?

7 A. Their legal matters; right.

8 Q. In reference to the declaration, what -- did you have
9 any idea what he was talking about?

10 A. Well, when he said he confiscated declarations with my
11 signature on them, I knew right then what he was talking
12 about.

13 Q. What is a declaration?

14 A. A declaration is just like an affidavit; more details.
15 Sworn statements under oath.

16 Q. In regards to -- what would be the contents of a
17 declaration?

18 A. Well, for instance, if something happened on the pod
19 and I seen it, if I did, I file a grievance, along with a
20 declaration, saying I saw it, witnessed it and what details
21 happened.

22 Q. So, it was basically a statement about something that
23 you witnessed take place?

24 A. Exactly.

25 Q. And that would be in regards to, you said, something on

1 the unit in regards to who?

2 A. Andre Jacobs.

3 Q. And I mean generally, if you fill out a declaration
4 stating that you witnessed something, you filled out a
5 declaration saying that you witnessed what?

6 A. Witnessed Giddens and them took his property, along
7 with somebody else's property.

8 Q. I mean, not just in regards to me, but just filling out
9 a declaration in general.

10 A. Filling out declaration, yeah, sure. Whatever I seen,
11 I put it down.

12 Q. Okay. Is that something that prisoners typically do?

13 A. Not all prisoners. Some prisoners just let what happen
14 happen, and that's it. They don't have -- no matter what they
15 do to me. They don't care. I do care about prisoners and
16 what happen around me.

17 Q. What was Mr. Giddens' demeanor when he made these
18 statements to you?

19 A. Well, when he made the statements, it was more like a
20 threat to me. Made like intimidation, threat. You all know
21 what happens. And that's when he had Officer Chirico and
22 numerous other officers beat me up in the hallway. More like
23 what happened again. So, it was like prisoner intimidation
24 and any -- at the time, time it made me angry, where I was
25 scared to come out of my cell.

1 Q. Where were you at when this took place?

2 A. The cell I was in, I was in A-200, 4 cell.

3 Q. A-200?

4 A. A-300, up on the third floor, but it goes A-200, and
5 A-100 and A-300. I was believed to be in 200, 200, 1024 cell.

6 Q. Was that on the same, same pod area as I was?

7 A. That's Andre Jacobs. Yeah, you was in 1 cell; I was in
8 4 cell.

9 Q. You stated that if you witnessed something, you would
10 file a grievance.

11 A. If I seen something, I would file a grievance on 001,
12 if it had something to do with assault, the allegations. That
13 way, the grievance coordinator would have to have somebody
14 investigate that.

15 Q. What were your interactions like with Carol Scire;
16 Carol Scire?

17 A. Well, far as her being the grievance coordinator, she
18 was more, like she used to cover the officers up in LTSU.
19 Whatever they did, she would act like it was merely a
20 disagreement, when it wasn't a disagreement.

21 Q. She would reject it, reject the grievance?

22 A. Reject the grievance.

23 Q. As a result of the grievance being rejected, what would
24 happen to that grievance?

25 A. You could still file that grievance at Central Office,

1 but once you get to Central Office they would say the same
2 thing, "denied". They would go along with what she said. Or,
3 the Superintendent would always go along with her, too.

4 Q. So, whenever you appeal the rejection of the grievance
5 to the Superintendent, he would go along with whatever Carol
6 Scire said?

7 A. Right.

8 Q. Do you remember who the Superintendent was at
9 SCI Pittsburgh?

10 A. Ah, at that time I think we had Philip -- I think it
11 was Philip, ah -- I'm sorry. I think -- it was the black
12 dude, Philip. I think that's his name, Phillips.

13 Q. And how do you know William Stickman?

14 A. William Stickman was a deputy at the time working
15 there.

16 Q. At SCI Pittsburgh?

17 A. Correct, at Pittsburgh.

18 Q. What interaction did you have with him?

19 A. Well, when I went on a hunger strike, numerous times he
20 filled out a complaint; see if they can force me to eat. But
21 the Judge denied that, because by them not having us having
22 television, radios, and the things we was supposed to have in
23 the hole, he wouldn't let us have it. So, I went on a hunger
24 strike.

25 Q. In your time being at SCI Pittsburgh in the LTSU, have

1 you ever witnessed prisoners' property being destroyed,
2 confiscated?

3 MR. BRADLEY: Excuse me, Your Honor, could we get a
4 clarification on the time frame he would be testifying to?

5 BY MR. JACOBS:

6 Q. You said you were at SCI Pittsburgh from what time?

7 A. Well --

8 Q. When did you first arrive at SCI Pittsburgh?

9 A. November 30th of 2000.

10 Q. When did you leave SCI Pittsburgh?

11 A. 24th of 2004, June 24th, 2004. June 24th or 20th, 2004.

12 Q. The entire time you were at SCI Pittsburgh, were you in
13 the same housing area?

14 A. No. They normally kept me on A-300. Because of time,
15 they moved me to A-100 or A-200. The guards would fabricate
16 assaults on me. Like they assaulted me, like I assaulted
17 them. So, they moved me to A-300. Kept me on the cameras.

18 Q. So, what portion of your time was spent on A-300?

19 A. Well, A-300. Mainly the whole time I was there, except
20 for a few months. They might put me on A-200 for about
21 three-weeks, then, put me on the other side for about a month,
22 then, they bring me right back to A-300.

23 Q. Okay. And then, in your time experienced on A-300 in
24 LTSU, have you ever witnessed --

25 MR. BRADLEY: Excuse me, Your Honor, the time frame

1 is prior to September of 2003. I think that needs to be
2 established.

3 BY MR. JACOBS:

4 Q. In 2003, were you at, were you in the LTSU on A-300
5 throughout the year of 2003?

6 A. Sure, but not all -- not all the time. A-300 is
7 upstairs.

8 Q. We got to get there, starting, when you say "A-300",
9 that's up on the third floor. Then, you got A-200 up on the
10 floor to 200, A-100. Then, not the top, A-200 and A-100
11 downstairs, too? Okay.

12 A. When you say, A-300, you got to say what you're saying.
13 A-300, 200, A-300, 100.

14 Q. While you were on A-300 --

15 A. Right.

16 Q. -- in the year 2003, or before the year 2003, did you
17 ever witness any of these persons that you identify destroy or
18 confiscate property of yours or of someone else's?

19 A. Well --

20 THE COURT: Just one minute. Are we talking about
21 legal property?

22 MR. JACOBS: Yes, I'm talking about legal property.

23 THE COURT: Okay. Make sure the question is
24 directed to that.

25 BY MR. JACOBS:

1 A. Yes, sir. Well, Chirico and Lieutenant Giddens, they
2 confiscated my property quite a few times, among other
3 people's property, and when they go and get them, they
4 assaulted them.

5 Q. What type of property?

6 A. Legal and personal property.

7 Q. Legal and personal property.

8 On how many occasions has your legal property been
9 taken by Chirico or Giddens?

10 A. Well, are -- well, the staff took it, Lieutenant
11 Giddens took it one time, and they gave it back to me right
12 when he was getting ready to leave the jail.

13 Q. Who is Stafford?

14 A. That's Frank Stafford. That was the unit manager up
15 there. He was a Lieutenant, and then, they shifted to unit
16 manager.

17 Q. Why was the property taken?

18 A. Because of the guys filing lawsuits and too many
19 grievances on them. So they took the whole box of grievances,
20 so they wouldn't have to file no complaints on them.

21 Q. In response to your filing lawsuits and grievances, all
22 your property was taken?

23 A. Correct. So, I wouldn't have to file no complaints.

24 Q. By Giddens and Chirico?

25 A. By Giddens, Chirico and Stafford.

1 Q. But that property was eventually returned to you?

2 A. Sure. It was returned after I left the jail, the day
3 after I packed up.

4 Q. And did them withholding your property have any effect
5 on your pursuing --

6 MR. BRADLEY: Your Honor, that goes beyond the scope
7 of what this testimony is permitted for.

8 THE COURT: You need to direct whether he was
9 retaliated against for that conduct.

10 MR. JACOBS: I think we have an issue. We'll excuse
11 the jury for a moment.

12 (Whereupon, jury retires.)

13 THE COURT: Be seated.

14 MR. JACOBS: Mr. Banks testified that whenever he
15 witnessed something that took place, he would report it. And
16 the core of the retaliation claim is that, one of the elements
17 of the retaliation claim is that a person's ordinary firmness
18 would be deterred from pursuing or asserting our rights.

19 So, in order for a jury to understand the type of
20 effect that the actions other defendants had on me, I believe
21 that examples of the type of effects it had on other persons
22 is also relevant to that inquiry.

23 MR. BRADLEY: First, I think the question he was
24 about to ask him is, what impact did taking your property have
25 on your legal actions.

1 THE COURT: That's what I thought. I thought you
2 were asking him about what happened to the cases those
3 materials related to.

4 MR. JACOBS: I'm asking, I'm focusing on adverse
5 action, the adverse action.

6 THE COURT: You need to rephrase the question, then.
7 Because you'll be permitted to ask that question.

8 MR. JACOBS: Okay.

9 THE COURT: You can't ask him about his underlying
10 cases that were involved.

11 MR. JACOBS: I'm not attempting to get into that.

12 THE COURT: Okay. Please rise for the jury.

13 (Whereupon, jury is seated.)

14 THE COURT: Mr. Jacobs, if you could just clarify
15 your question for the witness.

16 Can you hear us now, Mr. Banks?

17 MR. BRADLEY: Yes. Yes, I can hear you.

18 THE COURT: Okay. Mr. Jacobs, if you could just
19 please clarify your question.

20 BY MR. JACOBS:

21 Q. As a result of your property being taken, your legal
22 property being taken and your grievances being held, were you
23 in any way discouraged from pursuing those grievances?

24 A. Sure. Because once I filed -- say if I filed a
25 grievance and I got to Carol Scire, I would never be able to

1 respond to the initial response to the Superintendent, or I
2 never get the chance to respond to Central Office.

3 Q. By have you ever sent complaints to Central Office?

4 A. Yes, I filed informal complaints to them, and also to
5 State senators.

6 Q. Have you ever appealed grievances to Central Office?

7 A. Yes.

8 Q. Do you remember who reviewed those grievances at
9 Central Office?

10 A. Ah, she's not working there. Her name was Karen
11 Carrington, something like that. I'm not quite sure.

12 Hold it. Sharon Burkes. Her name was Sharon Burkes.

13 Q. Sharon Burkes?

14 A. Right.

15 Q. Do you remember what her position was?

16 A. Well, she was the Chief Grievance Coordinator.

17 Q. And what was -- as a result of her being Chief
18 Grievance Coordinator, what position, what role did she have
19 in the grievance process?

20 A. Well, her role was after she examined the grievance, to
21 see whether it would be denied or sent back for further
22 hearing. Or if they made a mistake, they can correct their
23 mistake. Or a lot of times, she would go along with them.

24 Q. When you say, "a lot of times", you mean how often?

25 MR. BRADLEY: Your Honor, again, I think this is

1 getting beyond the --

2 BY MR. JACOBS:

3 A. 99 percent of the times.

4 THE COURT: Okay. I think you just -- I think
5 you'll need to move on from Miss Burke. She's not a defendant
6 in this case.

7 MR. JACOBS: She works in the same office, Your
8 Honor.

9 THE COURT: I'll permit this, but then, you need to
10 make sure you're keeping it within the nature of this case.

11 MR. JACOBS: Okay.

12 BY MR. JACOBS:

13 Q. You say 99 percent of the time?

14 A. Correct.

15 Q. What interaction did you have with Jeffrey Beard?

16 A. Well, I -- when I, normally when I file complaints.

17 Q. Let me clarify the question. I mean, the time frame
18 between 2003 and beforehand.

19 A. As far as interaction with him, I filed a lot of papers
20 to Central Office for his investigation, but he sent someone
21 else down to investigate it for him, OPR, and far as results I
22 got from them, was mainly they go along with the DOC.

23 Q. And where does OPR come from?

24 MR. BRADLEY: Your Honor, I don't know what that has
25 to do with this case.

1 THE COURT: Let him see if he can develop it. Why
2 don't you explain.

3 BY MR. JACOBS:

4 Q. Who is OPR?

5 A. OPR, that's professional responsibility.

6 Q. And where is OPR located; where are they located at,
7 who are they associated with?

8 A. Central Office.

9 Q. Meaning the Department of Corrections; correct?

10 A. Yeah. Camp Hill, correct. That's the headquarters.

11 Q. And Jeffrey Beard resides at SCI Camp Hill, Central
12 Office?

13 A. Right. He's the Secretary.

14 Q. Has a misconduct ever been used, during the relevant
15 time frame, as a retaliatory tool?

16 A. Sure, sure. I had a lot of misconducts.

17 MR. BRADLEY: Your Honor -- Your Honor, again, can
18 we limit it to the defendants in this case?

19 THE COURT: I think you'll need to just have him say
20 who issued the misconducts and that type of thing.

21 MR. JACOBS: Okay.

22 BY MR. JACOBS:

23 Q. While you were in the LTSU, in your interactions with
24 Allen Lynch, Frank Chirico, Gregory Giddens, has a misconduct
25 ever been used as a retaliatory tool?

1 A. Yes. I would get a misconduct for when I ain't even
2 done nothing. They give me misconducts for nothing at all;
3 just for filing paperwork. That's what they say, as long as
4 they -- I file paperwork, they say they're going to file
5 paperwork.

6 Q. When you say, "paperwork", you mean what type of
7 paperwork?

8 A. Giving out DC-141, misconducts. They give me a lot of
9 CD time.

10 Q. I mean, the paperwork you were filing.

11 A. I was filing grievances.

12 Q. You were filing grievances.

13 THE COURT: Would you ask who the "they" are.

14 BY MR. JACOBS:

15 Q. When you say "they", you mean who?

16 A. Allen Lynch, Giddens and Chirico; Frank Chirico.

17 Q. Have you received misconducts from Frank Chirico?

18 A. Sure.

19 Q. Have you received misconducts from Gregory Giddens?

20 A. Yes.

21 Q. Have you received misconducts from Allen Lynch?

22 A. Yes.

23 Q. What was your interactions like with Michael Ferson?

24 A. Well, I went in front of him about twice. Only he
25 wasn't, to me, my opinion, he wasn't really a hearing

1 examiner, really looked into the misconduct. He just go along
2 with the DOC. I filed a lawsuit against him about that.

3 Q. From what year?

4 A. Well, I filed it in 2003.

5 Q. Filed a lawsuit against Michael Ferson in 2003?

6 A. Ferson, Michael Ferson, and Chirico, Giddens and Lynch.

7 Q. And you said that Ferson basically went along with the
8 DOC?

9 A. Right.

10 Q. Did you ever appeal a misconduct?

11 A. Sure, I always appeal all my misconducts. Take them to
12 Robert Bittner.

13 Q. What type of results did you get from Robert Bittner?

14 A. It be like, sustained. Whatever the DOC say, he
15 sustained it.

16 Q. Have you ever had a misconduct that you sent to Robert
17 Bittner that wasn't sustained?

18 A. No, not -- no, not that I know of. All the ones I got
19 from him, he sustained them.

20 MR. JACOBS: No further questions.

21 CROSS EXAMINATION

22 BY MR. BRADLEY:

23 Q. Mr. Banks, my name is Scott Bradley. I'm representing
24 the corrections defendants in this case. I'll raise my hand
25 so you can see who I am on the screen.

1 A. All right.

2 Q. Just a few questions.

3 I believe Mr. Jacobs had just asked you what effect
4 these actions had on your, I guess intention to file
5 grievances. Again, in the time frame you've been discussing,
6 how many grievances do you think you filed with the DOC?

7 A. About over 300.

8 Q. How many lawsuits?

9 A. Two in the LTSU.

10 Q. You had talked about Chirico and Giddens taking your
11 property, and then, it was returned when you left.

12 Do you recall that?

13 A. I recall that.

14 Q. Do you know exactly when that happened?

15 A. Well, it happened like 2002, right before 2003,
16 somewhere around November. Along with Stafford, too. I also
17 mentioned Stafford, but he's not in your lawsuit.

18 Q. Going back to your testimony about the declarations
19 that you provided to Mr. Jacobs; do you recall that?

20 A. Sure.

21 Q. I believe you said at that time you were in A-200?

22 A. I was in -- you got to realize A-200, A-300, A-100. I
23 was in A-200, in 4 cell. I believe in 4 cell.

24 Q. How did you get the declaration to Mr. Jacobs?

25 A. Well, the guards allowed to pass them. Inmates allowed

1 to pass, too.

2 Q. What do you mean by that?

3 A. If I got some legal work, I can get them over to him.
4 I can tell CO Herb, or another CO that's cool with me, send it
5 over to him, or I can fish it to him.

6 Q. How do you fish it to him?

7 A. Take a string from your sheet, make what we call a
8 "car" out of an envelope, and slide it right in his cell.

9 Q. Is that authorized?

10 A. It's authorized. Anything is authorized to get legal
11 work through. That's the only way to do it. I do it the best
12 way I can.

13 Q. That's your opinion. Is that authorized by DOC policy?

14 A. That's not -- I didn't get a misconduct for it, so,
15 it's not unauthorized, not unless I get caught.

16 Q. In the LTSU, did you have -- how would you, what would
17 you write a declaration on?

18 A. If somebody got assaulted, somebody's property was
19 taken --

20 Q. Excuse me, I'm talking about physically writing it.
21 What, what would you write it on? Not what event, but what
22 would you write it on?

23 A. Write it on anything. Hey, truthfully, what I got in
24 my cell. If I got toilet paper, I write on that paper. If I
25 got writing paper, I write on it. If I got one sheet of

1 paper, I write on it. If I have a request slip. Whatever I
2 got in my cell.

3 Q. Did you have blank paper in the LTSU?

4 A. Blank paper, sure; card paper.

5 Q. Where would you get the blank papers from?

6 A. Just the fact I'm indigent, I get it from the unit
7 representative. The grievance coordinator will contact the
8 business manager, and they would send me two packages a month
9 with 50 sheets in it.

10 Q. And were you able to purchase -- if you had funds in
11 your inmate account, would you be able to purchase these packs
12 of blank paper?

13 A. You would be able to purchase, but I wouldn't, because
14 it costs too much.

15 Q. But you indicated that every month you would get two
16 packs, with 50 sheets in each pack?

17 A. Sure. But like I said, I do a lot of legal work
18 myself, too.

19 Q. Now, with regard to the misconducts Mr. Jacobs asked
20 you about, you said you appeared in front of Mr. Ferson on two
21 occasions?

22 A. I didn't say how many occasions. I said I seen him a
23 couple, three occasions, maybe more than that. I didn't tell
24 him how many occasions.

25 Q. I think you said two.

1 A. I've seen Mr. Ferson over 50 times. You asked me.
2 Check with Miss Scire.

3 Q. You appeal all those misconducts?

4 A. Misconducts always get -- I appeal them to Central
5 Office.

6 Q. They are always sustained?

7 A. Always sustained, or you can say, "denied". Never win
8 nothing.

9 Q. You were not successful in challenging them; is that
10 correct?

11 A. Excuse me?

12 Q. What you're saying is you were never successful in
13 challenging your misconducts?

14 A. Nobody in LTSU was. You, anybody in LTSU file
15 misconducts with Ferson, or even Robert Bittner, nobody was;
16 only DOC.

17 Q. Were you ever actually guilty of any of those
18 misconducts you received?

19 A. Everybody who receives a misconduct gets found guilty.
20 That's my whole point.

21 Q. I'm asking you, did you actually ever do what was --
22 you were accused of doing in the misconduct?

23 A. Well, I don't think I was found guilty of everything I
24 was accused of, even if I did it or not.

25 Q. That's what I'm asking. Did you do some of the things

1 you were alleged to have done?

2 A. Some things I done; some things I didn't.

3 Q. Do you know what ratio that was?

4 A. 50/50, 75/25.

5 Like I said, 99 percent of my time with Robert Bittner
6 and Ferson, I was sustained or denied.

7 MR. BRADLEY: That's all Your Honor, thank you.

8 THE COURT: Any further questions, Mr. Jacobs?

9 MR. JACOBS: No, Your Honor.

10 THE COURT: Okay. Thank you. We're going to take a
11 brief recess.

12 Please rise for the jury.

13 MR. WILLIG: Your Honor, we're done with Mr. Banks?

14 THE COURT: Yes we, are.

15 MR. WILLIG: We're done with Mr. Banks. Thanks a
16 lot.

17 MR. BRADLEY: Thank you, sir.

18 THE COURT: Mr. Jacobs, do you have any other
19 witnesses you're going to be calling?

20 MR. JACOBS: No, Your Honor.

21 THE COURT: Okay. Please rise for the jury.

22 (Whereupon, jury retires.)

23 MR. BRADLEY: Your Honor, I would like to make a
24 motion.

25 THE COURT: Well, is he going to rest? I don't

1 know.

2 Are you resting?

3 MR. JACOBS: I may have a rebuttal witness.

4 THE COURT: That would come after the defendants'
5 case.

6 MR. JACOBS: Yes.

7 THE COURT: But your case in chief, you'll be
8 resting?

9 MR. JACOBS: I don't have no more witnesses.

10 THE COURT: Okay. What is your motion?

11 MR. BRADLEY: The plaintiff rests?

12 THE COURT: He's going to be resting. Yes, he
13 rests. Then, I'll have him repeat that in front of the jury.

14 MR. BRADLEY: Initially, with respect to the
15 retaliation claim, there's been no evidence that the following
16 defendants were aware that plaintiff had filed grievances or
17 lawsuits. That would apply to Defendant Bittner,
18 Defendant Mankey, Defendant --

19 THE COURT: Just a second. You're going too fast.

20 MR. BRADLEY: Sorry. Bittner, Mankey, Simpson,
21 McCoy, Beard, Ferson and McConnell.

22 Under the standard outlined in Mitchell versus Horn
23 318 F3d, 523, Third Circuit case in 2003, quoting Rauser
24 versus Horn, 241 f3d, 330, at 333, another Third Circuit case
25 from 2001, there has to be a causal link between the exercise

1 of the Constitutional right and the adverse action taken
2 against the inmate. In Booth versus King, 228 Fed. Appendix,
3 167, at 172, a Third Circuit case from 2007, where the inmate
4 fails to provide any evidence that the parties responsible for
5 the asserted adverse actions had any knowledge of the
6 grievances filed with the prison administrators, there's no
7 causal connection between the protected activity and the
8 adverse action.

9 In this case, with respect to Mankey, Simpson and
10 McCoy, the adverse action is their review of his misconduct
11 appeal. There was no evidence presented in Mr. Jacobs' case
12 that either of these members of the PRC were aware that
13 Mr. Jacobs had filed grievances or lawsuits.

14 Similarly, with respect to Michael Ferson, who was
15 the hearing examiner who ruled on Mr. Jacobs' misconduct, and
16 Mr. Bitner, who ruled on the final appeal of Mr. Jacobs'
17 misconduct, which is the asserted adverse action, there's been
18 no evidence presented by Mr. Jacobs that they were aware that
19 he filed the grievance, filed grievances, or filed any
20 lawsuits.

21 Defendant Beard is, of course, the Secretary of the
22 Department of Corrections. He's in on a claim of supervisor
23 liability. But to the extent there's any retaliation claim
24 against him, there's been no evidence that he was aware that
25 Mr. Jacobs had file grievances or lawsuits at the time that

1 his property was taken.

2 Mr. McConnell was the, the Security Captain at
3 SCI Pittsburgh at the relevant time. I think the challenged
4 claim with respect to him is that he didn't return the
5 property. But there's been no evidence, or evidence to show
6 that Mr. McConnell was aware Mr. Jacobs had been filing
7 gravenesses or had filed lawsuits.

8 I have additional argument on other claims. Do you
9 want me to proceed with that, or just go claim by claim?

10 THE COURT: I think what we will do is, I need to
11 make the most use of the jury's time. So, I'm going to take
12 your motion under consideration. I'll be reserving judgment
13 on it, a decision on it until after the verdict is returned.

14 So, we will, at the end of the day I'll let you make
15 the other arguments you have, and I'll hear back from the
16 plaintiff at that time. But I think right now, rather than
17 take up another hour of time -- these matters, by the way,
18 could have all been raised in motion for summary judgment.
19 So, we have them here now, and I need to make the most use of
20 the jurors' time while they are here.

21 So with that, would everyone please rise for the
22 jury.

23 (Whereupon, jury is seated.)

24 THE COURT: Be seated.

25 Mr. Jacobs, are you, as the plaintiff, resting your

1 case?

2 MR. JACOBS: Yes, ma'am.

3 THE COURT: Okay. Thank you.

4 MR. BRADLEY: Defendants recall Shelly Mankey for
5 the continuation of her redirect.

6 THE COURT: You may continue.

7 * * * * *

8 SHELLY MANKEY, a witness herein, having
9 been previously duly sworn, testified further as follows:

10 REDIRECT EXAMINATION

11 BY MR. BRADLEY:

12 Q. Miss Mankey, when Mr. Jacobs was cross examining you,
13 he had asked you about when you were handling his misconduct
14 appeal on the PRC back in, I believe it was 2003, whether you
15 were affected by any outside influence.

16 I would like to ask you again, when you wrote the
17 grievance, or the misconduct response to Mr. Jacobs' appeal,
18 were you affected by any outside influence?

19 A. No, I was not.

20 Q. At that time --

21 MR. BRADLEY: Excuse me, could we have the exhibit?
22 I believe it's Plaintiff's C.

23 Can you pull that up, so the bottom of the page
24 shows? That's good.

25 BY MR. BRADLEY:

1 Q. Again, identifying for the record exhibit, Plaintiff's
2 Exhibit C is the appeal response that was submitted in
3 response to Mr. Jacobs' appeal in his misconduct; is that
4 correct?

5 A. Yes, it is.

6 Q. Your signature appears on that?

7 A. Yes, it does.

8 Q. And is that dated October 1st, 2003?

9 A. Yes, it is.

10 Q. I believe you had already testified that as of that
11 date you were not aware of who Andre Jacobs was; is that
12 correct?

13 A. No, I was not.

14 Q. At that time, October 1st, 2003, were you aware
15 Mr. Jacobs had file grievances while in prison?

16 A. No, I was not.

17 Q. Were you aware that he filed any lawsuits against DOC
18 personnel?

19 A. No, I was not.

20 MR. BRADLEY: Thank you. That's all I have.

21 THE COURT: Mr. Jacobs, do you have any recross?

22 MR. JACOBS: Yes, Your Honor.

23 RECROSS EXAMINATION

24 BY MR. JACOBS:

25 Q. Are you familiar with the Department of Corrections

1 Code of Ethics?

2 A. Yes, I am.

3 Q. Are you aware of a provision within the Code of Ethics
4 which states that any decision by a superior officer, anyone
5 under that superior, must defer to their judgment, even if
6 they disagree with it?

7 A. I couldn't testify to that, what it states completely.

8 Q. You never read it?

9 A. I have read it, but I don't know that that's exactly
10 what it states.

11 Q. Okay. Do you see Paragraph 9?

12 A. Yes.

13 Q. Are you familiar with that paragraph?

14 Now, does that refresh your recollection?

15 A. It's been a long time since I read the Code of Ethics,
16 but I see it on the, the page.

17 Q. Does it refresh your recollection now?

18 A. I can see it on the page.

19 Q. Would you have been aware of the provisions within the
20 Code of Ethics at the time in question?

21 A. When we were doing the PRC appeals? Yes.

22 Q. You would have read the Code of Ethics with reference
23 to that?

24 A. That would have applied at that time? Not to the PRC
25 appeals process.

1 Q. Well, so you're saying that the Code of Ethics never
2 directly --

3 A. It had nothing to do with the appeal we were looking
4 at.

5 Q. Do you agree with me that the Code of Ethics deals with
6 how you were to conduct yourself during the entirety of your
7 employment with the Department of Corrections?

8 A. Yes.

9 Q. At all times?

10 A. Yes.

11 Q. Do you see Paragraph 9?

12 MR. BRADLEY: Your Honor, I don't believe that's the
13 complete paragraph.

14 THE WITNESS: Yeah. I believe there's another page.

15 MR. BRADLEY: So, if that could be shown as well. I
16 believe there's a Page 6.

17 BY MR. JACOBS:

18 Q. Did you familiarize yourself with what's on there now?

19 A. Could you put them both on there at the same time?

20 MR. BRADLEY: He's working on it.

21 A. Yes.

22 Q. Does that refresh your recollection?

23 A. Like I said, I remember reading the Code of Ethics at a
24 time prior to 2003, yes.

25 Q. Do you generally defer to your superiors?

1 A. Yes, when they give me an order.

2 Q. Officer superior says to you not to do something, you
3 would not do it, or you would do it?

4 A. If it was unethical, I would not do it.

5 Q. Okay. In your experience, have you ever witnessed
6 anything unethical by another DOC employee?

7 A. No.

8 Q. How long have you been with the DOC?

9 A. 11 years.

10 Q. 11 years? In 11 years, how much interaction --

11 MR. BRADLEY: Excuse me. Excuse me, Your Honor.

12 THE COURT: Yes.

13 MR. BRADLEY: I don't think this is appropriate
14 cross examination.

15 THE COURT: I'll see you -- we'll excuse the jury.

16 Please rise for the jury.

17 (Whereupon, jury retires.)

18 THE COURT: Please be seated.

19 Could you state your reasons, Mr. Bradley.

20 MR. BRADLEY: Initially, it's beyond the scope of
21 my redirect. But beyond that, the claim against Miss Mankey
22 is that she, in the process of sustaining the hearing
23 examiner's findings, violated his rights.

24 The fact that she did or didn't see other ethical or
25 unethical behavior, didn't report it or did report it, or

1 never saw any unethical behavior in the part of the prison she
2 worked is just not relevant to what's going on here.

3 MR. JACOBS: First of all, Your Honor, within the
4 complaint, I alleged not just --

5 THE COURT: Let's focus on, first of all, it does
6 appear to the Court this line of questioning is beyond the
7 nature and kind of questions that were asked in the redirect.

8 MR. JACOBS: He questioned outside influence. I'm
9 centering in on outside influence, and it's the policy, and it
10 is within the complaint. It is a policy of DOC employees to
11 act in collusion with other DOC employees, to sabotage
12 grievances, sabotage appeals, so forth and so on.

13 He brought the issue up, "outside influence". I'm
14 addressing the issue, outside influence.

15 MR. BRADLEY: If he wants to ask that question, he
16 can ask that question, if he's asking about whether she's
17 witnessed ethical, or whether she has ever witnessed unethical
18 behavior in her 11 years in the DOC.

19 THE COURT: That's --

20 MR. JACOBS: That goes to her credibility, Your
21 Honor. If she is saying that -- she just testified that if
22 she did, if she did receive an order from a superior, that
23 she -- that was lawful, but if it wasn't unethical, then, she,
24 she would, if it wasn't ethical, she would report it.

25 I'm testing her credibility. And this goes to

1 conspiracy. This goes to drawing the link. This goes to the
2 fact that when other defendants testify that they did talk to
3 other people. And you -- this is an issue of conspiracy, Your
4 Honor.

5 THE COURT: Well, the conspiracy has to do with
6 whether or not there was a conspiracy with respect to you and
7 the taking of your legal property. That's what the conspiracy
8 goes to.

9 MR. JACOBS: Okay.

10 THE COURT: So, you know, I don't see the link
11 between what areas you're trying to get into to your case.

12 MR. JACOBS: I'm going to the issue of outside
13 influence.

14 THE COURT: You need to direct the outside influence
15 to her.

16 MR. JACOBS: Well, this is direct to her. If --
17 Your Honor, if the DOC has a policy of, unwritten policy of
18 supporting misconduct of other DOC officials, that is
19 influence. That is influence. That is something that will
20 weigh on her ability to make an impartial decision with
21 respect to me.

22 THE COURT: Well, you have to link it to her, her
23 role at the PRC.

24 Q. If she saw misconducts that were improper and she
25 didn't do anything about them, and just, you know, rubber

1 stamped them, then, you can probe into that. But I don't know
2 what your asking her here that's related to that. You have to
3 keep it related to your case.

4 MR. JACOBS: I believe her credibility is related,
5 you know, the issue of her credibility here, saying, if she
6 did witness something unethical that she will report it.

7 And I'm saying that something unethical was going
8 on, and that something unethical did take place in my case in
9 regards to this appeal, and that she would not report it, and
10 that she did not report it. And the fact that she never
11 reports anything in regards to what a DOC official does, does
12 add weight to my suggestion that even if something unethical
13 did take place, she would not testify to that.

14 THE COURT: I think you need to ask if she has seen
15 things that were unethical in this conduct process and the
16 appeals that she was reviewing.

17 MR. JACOBS: I think that is also relevant to her,
18 this exhibit, as the DOC official and the Code of Ethics. If
19 she witnessed unethical -- I mean, why would she report it in
20 my case if she never reported it before?

21 THE COURT: Well, you can ask her that.

22 MR. JACOBS: That's what I mean.

23 THE COURT: In the misconducts. I mean, I have no
24 idea what the scope is of what you're asking, quite frankly.

25 MR. JACOBS: Your Honor --

1 THE COURT: I'm trying to give you a fair
2 opportunity to questions, but you have to keep your questions
3 related to this case, and the time frame.

4 MR. JACOBS: It is related.

5 THE COURT: And you are suggesting here, with
6 respect to her role as a reviewer, as someone that was in the
7 review process. So, if she's seen misconducts that in her
8 review process she turned a blind eye to, you can ask her
9 that. I mean, I don't know about what other kinds of
10 unethical conduct might be going on, you know, out in a yard
11 or somewhere else that may or may not have gotten reported,
12 and how serious those would be.

13 So I mean, we're going to be in a whole side
14 collateral issue here, and that's confusing. And so, you need
15 to keep it with respect to your claims.

16 MR. JACOBS: Okay. Let me ask you this, Your Honor.
17 Is it okay for me to ask her on her own observation, in her
18 own experiences, in her own interactions with guards, in her
19 time as Department of Corrections staff, has she ever
20 witnessed or reported unethical behavior. That, I mean, that
21 goes to her credibility.

22 MR. BRADLEY: That has nothing to do with this case.

23 MR. JACOBS: It has to do with her credibility. It
24 has to do with whether or not she's truthful, and if she would
25 report this in my case. It's relevant.

1 THE COURT: How does it go to truthfulness?

2 MR. JACOBS: It contradicts what she just said; if
3 she did witness unethical behavior, that she would report it.

4 My allegation against her is that there was
5 unethical behavior in my case that she did take part in, and
6 that's not reporting it, and that she's hiding it right now.

7 THE COURT: I'm not going to have this case go into
8 becoming what other kind of ethical behavior is going on over
9 three years or four years in the prison system. We need to
10 focus on your claims.

11 MR. JACOBS: I'm not --

12 THE COURT: And this witness is here because she was
13 in the review panel.

14 MR. JACOBS: Your Honor, I'm not going to ask her
15 what type of unethical behavior, she may have witnessed it,
16 how many times she may have witnessed it or anything of that
17 nature.

18 I'm going to ask these few questions, and that's it.
19 And I believe this goes directly to outside influence. The
20 matter which he raised on direct, and it's the only issue that
21 I'm addressing, "outside influence."

22 MR. BRADLEY: If he wants to ask about outside
23 influence, he needs to ask her, were you influenced by any
24 outside factors.

25 MR. JACOBS: He already asked that question.

1 MR. BRADLEY: I think that's the question.

2 THE COURT: How does this go to outside influence?

3 MR. JACOBS: The policy, the policy of supporting --
4 the policy of supporting DOC staff when they commit a
5 violation against a prisoner is the influence. That is the
6 influence. That is the motivation for her to rubber stamp my
7 appeal, and then, go along with the guards. That is the
8 influence.

9 MR. BRADLEY: He needs to ask her if she's aware of
10 that policy, if it exists, if that's where he's headed with
11 this.

12 THE COURT: You can ask her if there's a policy
13 along those lines, and that if there is, what's the effect to
14 her decision here.

15 MR. JACOBS: Okay.

16 THE COURT: Okay?

17 MR. JACOBS: Okay.

18 THE COURT: Please rise for the jury.

19 (Whereupon, jury is seated.)

20 THE COURT: Please be seated.

21 RECROSS EXAMINATION CONTINUES

22 BY MR. JACOBS:

23 Q. You basically rubber stamp any, any adverse action
24 taken against a prisoner; correct?

25 A. No.

1 Q. Anything, anything a guard said that a prisoner did,
2 you would agree with whatever the guard said?

3 A. No.

4 Q. Were you also aware of a policy at the time in question
5 of prison staff, DOC staff supporting any allegations by a
6 guard against a prisoner?

7 A. I am aware of no such policy.

8 Q. And at the time you rendered your decision on my
9 appeal, you were acting pursuant to that policy; weren't you?

10 A. I'm aware of no such policy.

11 MR. JACOBS: No further questions, Your Honor.

12 MR. BRADLEY: Nothing further, Your Honor.

13 THE COURT: I'm just going to excuse the jury for a
14 moment.

15 (Whereupon, jury retires.)

16 THE COURT: Please be seated.

17 I just want to put on the record that I believe the
18 last objection was based on Rule 608 of the Federal Rules of
19 Evidence, evidence of character and conduct of witnesses.

20 And that will be 608(b): Specific instances of the
21 conduct of a witness for the purpose of attacking or
22 supporting a witness' character for truthfulness, other than
23 conviction of crime, as provided in Rule 609, may not be
24 proved by extrinsic evidence.

25 They may, however, in the discretion of the Court,

1 if probative of truthfulness or untruthfulness being inquired
2 into on cross examination of the witness, one, concern the
3 witness' character for truthfulness or untruthfulness, or two,
4 concerning the character for truthfulness or untruthfulness of
5 another witness as to which character the witness being cross
6 examined has testified.

7 So, that's really -- and we're directed here as well
8 by Rule 404(b) with respect to the, with respect to this, with
9 respect to this issue.

10 And so, the Court was looking at this as to whether
11 it proves truthfulness or untruthfulness, and the broad and
12 breadth of the question relating to.

13 Whatever kind of ethical or unethical kind of
14 conduct may or may not have been observed was not specific
15 enough, and it would have created potential confusion and
16 collateral matters that would unduly delay the trial, and it
17 was not sufficiently related to truthfulness or untruthfulness
18 in this context.

19 Okay. Ready with your next witness?

20 MR. BRADLEY: Yes, Your Honor.

21 THE COURT: Please rise for the jury.

22 (Whereupon, jury is seated.)

23 THE COURT: Please be seated.

24 Call your next witness.

25 MR. BRADLEY: Yes, Your Honor. Defendants call

1 Charles Simpson.

2 THE COURT: Witness could please come forward, stand
3 in front of the court reporter, and be sworn.

4 Please take the witness stand.

5 * * * * *

6 CHARLES SIMPSON, a witness herein, having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BRADLEY:

10 Q. Good afternoon. Could you please state your name to
11 the jury, please.

12 A. Charles Simpson.

13 Q. And are you currently employed?

14 A. Yes, I am.

15 Q. By whom?

16 A. Pennsylvania Department of Corrections.

17 Q. How long have you been employed by the Department of
18 Corrections?

19 A. 28 years.

20 Q. What is your current position with the Department?

21 A. I'm a shift captain.

22 Q. At what institution?

23 A. SCIP.

24 Q. Pittsburgh. As a shift captain, are you a uniformed
25 officer?

1 A. Yes, I am.

2 Q. In your career with the Department of Corrections, have
3 you always been a uniformed officer?

4 A. Yes, I have.

5 Q. And what was your first position with the Department of
6 Corrections?

7 A. I was Correctional Officer 1.

8 Q. And you advanced from Correctional Officer 1 all the
9 way up to Captain?

10 A. Yes, I did.

11 Q. Back in September of 2003, where were you assigned?

12 A. SCI Pittsburgh.

13 Q. And what was your assignment?

14 A. I was a 6:00 to 2:00 shift captain.

15 Q. Can you tell the jury briefly what your
16 responsibilities as the 6:00 to 2:00 shift captain were?

17 A. I oversee the running of the shift that starts at
18 6:00 o'clock in the morning, finishes up at 2:00 o'clock in
19 the afternoon.

20 I have subordinate lieutenants who work under my
21 command, who supervise sergeants, as well as other officers.

22 Q. Do you know the plaintiff in this matter, Andre Jacobs?

23 A. No, not really.

24 Q. Prior to being named as a defendant in this lawsuit,
25 did you know Mr. Jacobs?

1 A. Other than just whenever I sat in on the PRC hearing.
2 That's the only time I had any dealings involving him.

3 Q. Did you ever personally interact with him?

4 A. No.

5 Q. You had indicated that you sat on the PRC. I believe
6 the jury has heard some testimony on what the PRC does, but
7 could you briefly explain your understanding of the role of
8 the PRC?

9 A. Yeah. There is an area where the inmate will appeal
10 the findings from the hearing examiner to the Program Review
11 Committee, and we look over what took place at the hearing.
12 What narrow parameters, whether there was a violation of
13 procedures, or if the punishment was excessive or witnesses
14 were improperly denied. We ensure that the hearing examiner
15 performs his job as required.

16 Q. Plaintiff's Exhibit C, which has been previously marked
17 as the PRC response to Mr. Jacobs' appeal after misconduct
18 back in September, October of 2003; have you seen that
19 document before?

20 A. Yes.

21 Q. Your name and signature appear on this document?

22 A. Yes, it does.

23 Q. Is that at the line that says, Charles J. Simpson,
24 Captain?

25 A. Yes, it is.

1 Q. Appears to be dated 10/1/'03.

2 A. Yes.

3 Q. Looking at that document today, do you have any
4 independent recollection of signing that document?

5 A. Yes, I do. That's my signature.

6 Q. I understand that's your signature, but do you have,
7 sitting here today in the courtroom, do you have any
8 independent recollection of having signed that back in 2003?

9 A. Not really.

10 Q. In October of 2003 when you sat on the PRC that
11 reviewed Mr. Jacobs' misconduct appeal, were you aware at that
12 time that Mr. Jacobs had filed grievances while in prison?

13 A. No.

14 Q. Were you aware that he filed a lawsuit against other
15 DOC personnel?

16 A. No.

17 Q. If you can recall, do you know if anybody from outside
18 the PRC attempted to direct the decision of the PRC in that
19 case?

20 A. Nobody did.

21 Q. Did you ever work in the LTSU when you were assigned at
22 SCI Pittsburgh?

23 A. No.

24 MR. BRADLEY: That's all the questions I have, sir.

25 Thank you.

1 CROSS EXAMINATION

2 BY MR. JACOBS:

3 Q. Good afternoon, Mr. Simpson.

4 A. Afternoon.

5 Q. You said that you worked for the DOC approximately
6 28 years?

7 A. Yes. Started on November 6th, 1980.

8 Q. And what portion of that time was spent serving as a
9 member of the PRC?

10 A. I don't recall the exact dates, but it was
11 approximately, I would say, late '90's, up until the SCIP
12 closed in 2005.

13 Q. Approximately five years?

14 A. At least.

15 Q. In that five years, how many appeals would you estimate
16 you reviewed in that capacity?

17 A. Very -- numerous. None I could recall a specific
18 number, but on average, we had anywhere from sometimes three a
19 week, to sometimes 20 a week. So I never really kept count.

20 Q. In total, do you think it would be more than 50?

21 A. Yes.

22 Q. More than 100?

23 A. At least.

24 Q. More than 200?

25 A. Probably, yes.

1 Q. Okay. Isn't it true that whenever a prisoner appeals,
2 the committee that you sat on, PRC, usually denied the appeal?

3 A. Not always.

4 Q. Not always, but usually?

5 A. My answer is, not always.

6 Q. Before we get to that --

7 MR. BRADLEY: Your Honor --

8 THE COURT: You have an objection?

9 MR. BRADLEY: I don't necessarily object. I just
10 don't know if this is the proper time to do this.

11 THE COURT: We'll take a brief recess. Please rise
12 for the jury.

13 (Whereupon, jury retires.)

14 THE COURT: Please be seated.

15 MR. BRADLEY: He's put up our response to request
16 for admissions, and it indicates in there that this witness
17 previously used to work, usually when talking about the extent
18 to which they affirmed the hearing examination decision. I
19 don't have a problem with the admissibility of that. I just
20 don't know that confronting him with this is the appropriate
21 thing to do, or is this something that should come in in
22 rebuttal in his subsequent portion of the case.

23 THE COURT: Well, if it's -- if it's inconsistent,
24 he can ask him if he's ever said that he usually did
25 something.

1 MR. BRADLEY: But again, he can confront him, and he
2 can affirm or deny it. But then, to actually impeach him, I
3 don't know that this is the right time to do it. That would
4 come during his rebuttal.

5 THE COURT: I think he can show it to him. This is
6 something that's admissible in evidence. He can use it right
7 now, if he wants to.

8 MR. BRADLEY: Okay, that's fine. I apologize. Like
9 I said, I didn't object to what it was; I just was concerned
10 about the process.

11 THE COURT: Okay. Please rise for the jury.

12 (Whereupon, jury is seated.)

13 THE COURT: Okay. Please be seated.

14 Please be seated.

15 Is that clear on the screen? Can the jurors read
16 that?

17 THE JURORS: No.

18 THE COURT: Can you make it clearer?

19 CROSS EXAMINATION CONTINUES

20 BY MR. JACOBS:

21 Q. During the relevant time frame, Mr. Simpson, did
22 Miss Mankey ever -- did she usually participate as a PRC
23 member, along with you?

24 A. Yes, she did.

25 Q. Prior to 2003 as well?

1 A. I would think so, yes.

2 Q. Do you recognize this document?

3 A. It looks vaguely familiar.

4 Q. If you look to the caption of the case, is that the
5 case that we're here on today?

6 A. I believe so.

7 Q. You want to make sure?

8 THE COURT: Will you stipulate to that, Mr. Bradley?

9 MR. BRADLEY: I'm sorry, Your Honor. Of course,
10 yes. I apologize.

11 THE COURT: Okay.

12 BY MR. JACOBS:

13 Q. And this document asks you to admit or deny facts
14 pertaining to this case; correct?

15 A. Correct.

16 THE COURT: Which question do you want him to look
17 at?

18 MR. JACOBS: I told him.

19 THE COURT: Okay.

20 BY MR. JACOBS:

21 Q. Do you see No. 13?

22 A. Yes.

23 Q. Can you read it?

24 A. The PRC that you sat on routinely sustained the hearing
25 examiners refusal to let a prisoner call a witness at prison

1 disciplinary hearings?

2 Defendants' response: And then, there's a blank,
3 "admitted", and a blank and, "denied".

4 Q. Okay.

5 MR. BRADLEY: Your Honor, just for the record,
6 that's not the question that he asked him. To start this
7 process, that's not the question he asked him.

8 THE COURT: That's okay. Was there another
9 question, Mr. Jacobs?

10 MR. JACOBS: I think it's two similar questions in
11 the same area.

12 THE COURT: You want to go back in the questions?

13 BY MR. JACOBS:

14 Q. I'm sorry. You see No. 11?

15 A. Yes.

16 Q. Could you read that?

17 A. The PRC's that you sat on, as a member on, almost
18 always sustain the decision of the hearing examiner?

19 Defendant's response: --

20 MR. JACOBS: You want to turn to the response page,
21 please.

22 BY MR. JACOBS:

23 Q. What was your response?

24 A. The No. 11?

25 Q. Yes.

1 A. The statement is admitted to, that usually occurs.

2 It is denied, if it is implying that this is routine,
3 as this is determined at the hearing.

4 Q. So, you admitted, then, that it usually did occur?

5 A. On that statement, yes.

6 Q. That you usually denied a prisoner's appeal?

7 A. On that statement, yes.

8 Q. Okay. And the reason you usually deny a prisoner's
9 appeal is because you don't feel as though prisoners should
10 have rights; correct?

11 A. Could you repeat that question again?

12 Q. The reason that you usually deny the prisoner's appeal
13 while you was a PRC member is because you don't want prisoners
14 to have rights; you don't feel as though prisoners should have
15 rights?

16 A. That is not the case.

17 Q. You do not feel as though that prisoners should have
18 their rights protected at a disciplinary hearing?

19 A. Could you repeat that question one more time?

20 Q. You don't care, you don't care about prisoners having
21 rights at a prison disciplinary hearing?

22 A. Is that a statement, or is that a question?

23 Q. I'm asking you.

24 A. If you form it in a question.

25 Q. You review misconduct hearings, you review the decision

1 of the hearing examiner; correct?

2 A. That is correct.

3 Q. And when that appeal comes to you, when a prisoner
4 appeal comes to you, you're not concerned with whether or not
5 the prisoner's rights was violated at the disciplinary
6 hearing; are you?

7 A. My job at the hearing, at the Program Review Committee
8 hearing is to review the actions of the hearing examiner and
9 what took place at the misconduct hearing.

10 Q. Yes, or, no? Are you concerned with whether or not the
11 prisoner's right was violated at the disciplinary hearing?

12 A. It's not in my scope.

13 Q. Are you concerned with it; yes, or, no?

14 A. I'm not quite sure I understand your question.

15 Q. When a prisoner appeals a disciplinary decision to the
16 PRC, are you or are you not concerned with whether his
17 constitutional rights were violated at that particular
18 disciplinary hearing?

19 A. Well, concerns over constitutional rights are beyond my
20 scope.

21 Q. Yes, or, no?

22 A. If it had to be an answer, it would be, no.

23 Q. So, you're also not concerned with whether or not the
24 misconduct could have been, could have been used as a
25 retaliatory tool?

1 A. Could you repeat that question again?

2 Q. You're also not concerned with whether or not the
3 particular misconduct may have been used as a retaliatory
4 tool?

5 In other words, if a guard used a misconduct to
6 retaliate against a prisoner, you're not concerned with that
7 either; are you?

8 A. It would appear to be in a hypothetical situation, or
9 are you talking about your situation?

10 Q. I'm talking about any situation. I'm talking about
11 your review, the scope of your review.

12 If a, if a prisoner made a claim that a guard used
13 misconduct as retaliatory tool, is that something that you're
14 concerned with when you render your decision?

15 A. It's not part of the decision-making process of a PRC
16 member.

17 Q. Okay. Are you concerned with -- you said that you're
18 not concerned with the constitutional rights of the prisoner;
19 correct?

20 A. As a member of the PRC?

21 Q. As a DOC employee.

22 A. In a very broad, general sense, yes.

23 Q. And one of the grounds for appeal that a prisoner could
24 use is a violation of the law; that correct?

25 A. Yes.

1 Q. And even though it might be a violation of law, you
2 still don't review whether or not there was a violation of
3 law; correct?

4 A. It's beyond -- as far as, law violations are beyond our
5 scope.

6 Q. But yet, it's on the form that that's one of the
7 grounds that a prisoner could challenge; correct?

8 A. Correct.

9 Q. So, even though the form said that a prisoner could
10 challenge a violation of law, you're not in position to
11 actually correct any violations of the law?

12 A. We're not the law enforcement.

13 Q. So, basically you rubber stamp the appeal?

14 A. That is not correct.

15 Q. And you basically don't condone anything the guards
16 write against a prisoner?

17 MR. BRADLEY: I don't believe I understood that
18 question, Your Honor. Could he rephrase that.

19 BY MR. JACOBS:

20 Q. Any time a guard writes a misconduct against a
21 prisoner, and it's appealed up to you, you don't care what the
22 guard did, why he did it, and whether it's valid or not?

23 A. That's not true.

24 Q. As long as there's no procedural error, as you stated
25 earlier, you're not going to overturn the decision; correct?

1 A. As long as there is none of those three parameters that
2 we have available to review, that's what we concern ourselves
3 with; the procedures, the witnesses, as well as the sanctions.

4 Q. Okay. Well, the witnesses, if a prisoner calls a
5 witness at a disciplinary hearing, attempts to call a witness
6 at a disciplinary hearing, and the witness is not called, what
7 is the scope of your review; what are you deciding?

8 A. To ensure that the hearing examiner properly excluded
9 the witness or included the witness, as the case may be.

10 Q. Based on what criteria?

11 A. The relevancy of the witness.

12 Q. And the DC-801 procedures, too?

13 A. Correct.

14 Q. Correct?

15 A. Correct.

16 Q. And under the DC ADMIN 801 procedures, a prisoner is
17 allowed to call a witness at a disciplinary hearing?

18 A. As long as he's allowed by the hearing examiner;
19 correct.

20 Q. And are you familiar with that section of allowing
21 prisoners to, to call witnesses at a disciplinary hearing?

22 A. Very familiar with it.

23 Q. What is the criteria for calling the witness at the
24 disciplinary hearing?

25 A. To, if it's determined by the hearing examiner, if he

1 would be able to help to add to the, the misconduct hearing,
2 as far as being relevant, as far as they would help him, to
3 whether it's necessary or needed testimony in the case at hand
4 or not.

5 Q. Do you think that in this particular case, where a
6 prison guard labels a declaration contraband, that a witness'
7 testimony will be relevant to what the document was and
8 whether or not the document belonged to him?

9 A. In your case in particular?

10 Q. No. Yes, in this particular case.

11 A. We found as part of the member of PRC that the hearing
12 examiner properly excluded any witnesses you wished to call.

13 Q. I understand that.

14 What I'm asking you now is, did you think that
15 Mr. Bank's testimony as a witness at the disciplinary hearing
16 that the documents did not belong to him, and the nature of
17 the documents being legal, was relevant to whether or not I
18 was guilty of contraband, and whether or not I loaned and
19 borrowed someone else's property? Do you think his testimony
20 is relevant to that question?

21 A. No, because we, basically, we believe that the
22 exclusion by the hearing examiner was proper.

23 Q. Regardless of whether it was proper or not?

24 A. As I said before, the hearing examiner's determination
25 of whether the witness was needed or not was what we

1 determined.

2 Q. So, that's what rules. Because the hearing examiner
3 said it wasn't relevant, you said that it wasn't relevant;
4 correct?

5 MR. BRADLEY: Your Honor, I'm not sure that the
6 document reflects that the hearing examiner said he was
7 excluded because it was not relevant.

8 MR. JACOBS: Well, he said that --

9 THE COURT: Would you like to re-ask the question?

10 BY MR. JACOBS:

11 Q. Did you conduct an independent review of the misconduct
12 hearing?

13 A. As a member of the PRC, we reviewed --

14 Q. Just answer that question first.

15 Did you conduct an independent review of what took
16 place at the misconduct hearing, as a member of PRC?

17 A. By, by "independent", we reviewed what took place as
18 far as the notations from the hearing examiner.

19 Q. So, did you review the actual documents in question?

20 A. The misconduct?

21 Q. No, the actual -- the declarations, the documents that
22 were taken that were alleged to be contraband.

23 A. No, they weren't. As part of our review, PRC --

24 Q. But they were in the possession of the hearing
25 examiner; correct?

1 A. I believe they were at -- they were shown at the
2 hearing. I'm not sure.

3 Q. And they were used as evidence to sanction me for
4 having those indictment documents; correct?

5 A. I believe so.

6 Q. That was also the basis for accusing me of having
7 contraband, and loaning and borrowing, and refusing to obey a
8 direct order; correct?

9 A. I believe so.

10 Q. And you don't think that, whether or not I had
11 contraband, you don't think it was necessary to review the
12 actual evidence to determine whether or not it was contraband,
13 whether or not it belonged to Mr. Banks?

14 A. It wasn't our job to retry the hearing.

15 Q. I'm asking you, do you think it was relevant?

16 A. No.

17 Q. Even if my rights to access to the Courts was involved?

18 A. That wasn't part of our review.

19 Q. Yes, or, no?

20 A. No, it wasn't part of our review.

21 MR. JACOBS: No further questions.

22 REDIRECT EXAMINATION

23 BY MR. BRADLEY:

24 Q. Just a few additional questions, Captain Simpson, and
25 just to clear this up.

1 Mr. Jacobs had asked you some questions about whether
2 you were concerned with prisoner's civil rights. I want to
3 take you out of the PRC and in your role as Captain of the
4 Department of Corrections. In that role in the prison, are
5 you concerned with prisoner civil rights?

6 A. Yes, we are.

7 Q. Is it the job of the PRC to re-hear the misconduct
8 hearing below?

9 A. No, it is not.

10 Q. Mr. Jacobs had asked you some questions about whether
11 the misconduct hearing was contrary to law.

12 Are you an attorney?

13 A. No, I'm not.

14 Q. You have any legal training?

15 A. No, I do not.

16 Q. When you reviewed the record of the misconduct hearing,
17 are you looking for compliance of the requirements of the
18 DOC's misconduct policy?

19 A. Yes, we are.

20 Q. With respect to, specifically, the review of
21 Mr. Jacobs' misconduct back in October of 2003, other than the
22 members of the PRC, did any of the other defendants in this
23 matter approach you and direct you to come to a specific
24 conclusion on his appeal?

25 A. Nobody contacted me.

1 Q. Did you have any -- outside of the PRC, did you have
2 any discussions with any of the other defendants in this
3 matter about Mr. Jacobs?

4 A. No, I did not.

5 Q. Again, at that time, did you have discussions with any
6 of the other defendants about efforts to retaliate against
7 Mr. Jacobs by sustaining the hearing examiner's finding in his
8 misconduct appeal?

9 A. No, I did not.

10 Q. Thank you. That's all.

11 RECROSS EXAMINATION

12 BY MR. JACOBS:

13 Q. You familiar with the Code of Ethics?

14 MR. BRADLEY: Beyond the scope of redirect, Your
15 Honor.

16 THE COURT: Overruled.

17 A. Yes, I am.

18 Q. And the Code of Ethics dictates what your code of
19 conduct is as an employee of the Department of Corrections;
20 does it not?

21 A. That is correct.

22 Q. That's at all times?

23 A. Yes, it is.

24 Q. And it also states within the Code of Ethics that if
25 you're aware of any violations of law, any violations of

1 rights, or any type of improper conduct, that you should
2 report that misconduct; isn't that correct?

3 A. That's a general statement; yes.

4 Q. Well, you want to go over it, just to make sure?

5 A. Do you have a specific? There's several items in the
6 Code of Ethics. If you -- you talking about a specific one?

7 Q. Okay. So, if you became aware of a violation, such as
8 a fabricated misconduct, would it be your duty under the Code
9 of Ethics to report that misconduct?

10 A. This is a hypothetical situation?

11 Q. Hypothetical under the Code of Ethics, your
12 interpretation of the Code of Ethics.

13 A. If I was made aware that there was a fabrication or a
14 lie made up, yes.

15 Q. Okay. If you were aware that a violation of law
16 occurred, in your capacity as PRC member, under the Code of
17 Ethics, would you be required to report it?

18 A. If it's a violation of law, yes.

19 Q. So, despite you being in a position as a PRC man,
20 you're still required to recognize the law and any type of
21 falsification of misconducts by prison guards; correct?

22 A. They are corrections officers. But if I was made aware
23 of anything, yes, I would be required by my Code of Ethics to
24 report it, yeah.

25 Q. But it's the policy of the DOC to support any

1 misconduct that a guard commits against a prisoner; isn't that
2 correct?

3 A. No.

4 Q. You don't care whether or not a guard did something to
5 a prisoner; do you?

6 A. Yes, I do care.

7 Q. Even if a guard did do something improper to a
8 prisoner, you're not going to report it; are you?

9 A. Could you restate that as a question?

10 Q. Even if a guard did do something to a prisoner, you
11 wouldn't report it; would you?

12 MR. BRADLEY: Your Honor, that's just -- I object to
13 that question.

14 THE COURT: Sustained.

15 MR. JACOBS: No further questions, Your Honor.

16 MR. BRADLEY: Nothing further, Your Honor.

17 THE COURT: Okay. Witness is excused.

18 This will be a good time for our afternoon recess.
19 Please rise for the jury.

20 (Whereupon, the jury retired and court recessed at
21 3:25 p.m.)

22 * * * * *

23 (Whereupon, court reconvened.)

24 THE COURT: Please be seated.

25 Do you have your next witness?

1 MR. BRADLEY: Yes, Your Honor. Defendants call
2 Michael Ferson.

3 THE COURT: If the witness could please stand in
4 fronted of the court reporter to be sworn.

5 Thank you. Please be seated.

6 * * * * *

7 MICHAEL FERSON, a witness herein, having
8 been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BRADLEY:

11 Q. Would you please state your name, and spell it for the
12 record.

13 A. Michael Ferson, F-E-R-S-O-N.

14 Q. You currently employed?

15 A. No, sir, I'm not. I'm retired.

16 Q. Retired from what?

17 A. Pennsylvania Department of Corrections. I was a
18 hearing examiner when I retired.

19 Q. How long did you work for the Department of
20 Corrections?

21 A. About 31 years.

22 Q. And what position did you hold when you first started
23 with the Department of Corrections?

24 A. Corrections counselor from 1975 'til 1986. 1986, I was
25 promoted to a hearing examiner at the State Regional

1 Correctional Facility at Mercer, and in 1992 I transferred
2 back to the State Correctional Institution at Pittsburgh.

3 Q. And what position did you hold at SCI Pittsburgh?

4 A. I was an -- initially at Pittsburgh, I was a
5 corrections counselor, and when I returned to Pittsburgh, I
6 was the hearing examiner.

7 Q. And that was in 1992?

8 A. Yes, that's correct.

9 Q. Did you retire as a hearing examiner?

10 A. Yes, sir, I did.

11 Q. Can you explain to the jury what the duties and
12 responsibilities of the hearing examiner are?

13 A. Certainly. The best analogy I can offer to folks that
14 don't have a background in it is when you and I were in junior
15 high school and we did something wrong, we were sent down to
16 the vice principal's office.

17 So, when something happens within one of the
18 correctional facilities, when an inmate is alleged to have
19 done something that violates the code of behavior that they
20 have, they're sent down to the hearing examiner for an
21 adjudication.

22 When inmates come into any correctional facility, they
23 are given an inmate handbook. Within that handbook is
24 something we call Administrative Directive 801, and that
25 explains the inmate disciplinary process. In that process,

1 the hearing is conducted by myself, a hearing examiner. I am
2 not -- I'm not an employee of State Correctional Institution
3 Pittsburgh, or any other State correctional institution.

4 I'm -- I was an employee of the Department of
5 Corrections, but we were supervised by the chief counsel's
6 office. I am not an attorney. I have a Bachelor's degree in
7 psychology. I have a Master's degree in education, with
8 certification as a secondary school guidance counselor.

9 In an inmate misconduct hearing, inmates would have
10 generally the same rights we would at a magistrate level
11 hearing. In some cases they may have an assistant to help
12 them, not an attorney, but an assistant.

13 If they wish to have a witness, and the hearing
14 examiner decides that that witness is relevant to make a
15 determination for the ultimate instance, they may have those
16 witnesses called.

17 When we conduct the hearing, I conduct it,
18 approximately 200 to 250 misconducts a month, at Pittsburgh.
19 So, this was not a long, drawn out affair; five to ten minutes
20 maybe, and that was the extent of the whole hearing.

21 The inmate is given a copy of something that I believe
22 you've seen before, which we call a misconduct form, which
23 indicates to the inmate what he's being charged with, which
24 has to be a violation of something included in the rule book,
25 in the 801. Tells him what he is and is not allowed to do.

1 He's given a written copy of that. At the time he's given a
2 written copy of that, which the copy is approved by a shift
3 commander. The inmate then gets a copy of it, and it's
4 documented. We have a time period to hold a hearing. When
5 he's given his copy, he gets a witness sheet, which on that
6 witness sheet he's allowed to request his witnesses. He's
7 allowed to request assistance, and he's also given a revision
8 form. At the end of the hearing he's given a written
9 explanation of what I did and why.

10 If he's found guilty, he is then given an appeal form,
11 which he may submit to the Program Review Committee.

12 THE COURT: Could you just pull your chair a little
13 closer, and move the mike over, and speak directly into the
14 bulb of the mike. Thank you.

15 BY MR. JACOBS:

16 Q. In September of 2003, you were the hearing examiner at
17 SC -- assigned to SCI Pittsburgh?

18 A. That's correct.

19 Q. Were there any other hearing examiners assigned to SCI
20 Pittsburgh at that time?

21 A. No. If something -- if someone was on vacation, or
22 someone needed to cover, then, another hearing examiner could
23 come in and hold the hearings. They are conducted the same
24 way in any of the State Correctional Institutions.

25 Q. Taking you back to September of 2003, at that time did

1 you know the plaintiff, Andre Jacobs?

2 A. How would we define "know"?

3 Q. Did you have -- in the course of your duties at
4 SCI Pittsburgh, did you have occasion to come into contact
5 with Mr. Jacobs?

6 A. Yes, I did.

7 Q. Specifically, on September 24th, 2003, do you have any
8 independent recollection of holding a misconduct hearing with
9 Mr. Jacobs?

10 A. I did not have any until I got a copy of the lawsuit,
11 and at that point, then, I was, you know, I remembered having
12 done that, yes, because of my documentation.

13 MR. BRADLEY: We have an exhibit to mark, Your
14 Honor. I believe that's Defendant's D.

15 Can you put up -- may I approach the exhibits, Your
16 Honor?

17 THE COURT: Yes, you may.

18 MR. BRADLEY: Thank you.

19 BY MR. BRADLEY:

20 Q. You see an exhibit that's placed on the screen
21 previously marked as Plaintiff's 7-A. Is that the type of
22 document upon which an inmate would be issued a misconduct?

23 A. Yes, sir.

24 Q. And specifically, does that appear to be the
25 misconduct -- a misconduct that was issued to Mr. Jacobs on

1 September 16th, 2003?

2 A. Yes, sir, it does.

3 MR. BRADLEY: Thanks.

4 Q. The document that has been placed on top of
5 Plaintiff's 7-A, do you recognize that document? And let's
6 start with the form of the document.

7 A. I'm sorry, sir?

8 Q. Do you recognize the form of that document?

9 A. Yes.

10 Q. What form is that?

11 A. That's a hearing report.

12 Q. Is that what you would fill in at the conclusion of the
13 hearing?

14 A. I would be filling it out during the hearing, yes.
15 That would be a copy of what the inmate is given at the
16 completion of the hearing.

17 Q. And looking in the upper right corner of what's been
18 marked as Defendant's Exhibit D, does that misconduct number
19 correlate to the misconduct that was issued to Mr. Jacobs on
20 September 16th, 2003?

21 A. It does.

22 MR. BRADLEY: Can you put that whole document up
23 now?

24 BRADLEY KITLOWSKI, Law Clerk: D?

25 MR. BRADLEY: D, yes.

1 BY MR. BRADLEY:

2 Q. Can you identify that document for the jury?

3 A. Yes, sir, I can. That's a hearing report that I
4 prepared.

5 Q. In --

6 A. And the writing is a bit unique, that everyone is aware
7 of.

8 Q. Does that indicate that Mr. Jacobs was afforded a
9 misconduct hearing on misconduct A469506 on September 24th,
10 2003?

11 A. Yes, it does.

12 Q. And again, that's your handwriting on there?

13 A. Absolutely, sir.

14 Q. Would you mind reading that to the jury?

15 A. Glad to. Says, sworn -- sworn in. Witness sheet
16 properly submitted. Pleads not guilty. Submits written
17 version. Testified Mr. Banks gave him copies of material he
18 submitted to the Courts. Hearing examiner finds Sergeant
19 Lynch's report more credible, and finds he has presented some
20 evidence to show that while searching Mr. Jacobs' cell he
21 found two pages of legal papers belonging to Inmate G. Banks.
22 The hearing examiner notes from personal observation the
23 documents are unsworn declarations. Note Mr. Jacobs' own
24 testimony as to how he obtained the documents. He is found
25 guilty of number 36, No. 44, Class 1 sanction, 30 days DC, to

1 be served consecutively. Revoke contraband. No. 35DWOP.

2 Q. Which, DWOP means, the charge is dismissed without
3 prejudice?

4 THE COURT: You need to speak into the mike.

5 A. Oh, I'm sorry. It means, the charge is dismissed
6 without prejudice.

7 Q. As you sit here today, do you have an independent
8 recollection of having held that hearing with Mr. Jacobs back
9 on September 24th, 2003?

10 A. An independent, no. I've been retired for five years,
11 and that part of my life is behind me.

12 Q. So, what you know about that hearing is what you
13 recorded on this document?

14 A. Yes, sir. That's an exact. What is not recorded on
15 the document is the fact that when I, I saw that there was a
16 question about legal material, I contacted my supervisor. I
17 looked at the material, took it with me to the phone, and
18 talked to my supervisor, who's the chief hearing examiner, and
19 asked him, is this legal material? And he said, describe what
20 it was. Told him what it was. He said, no, he believes that
21 it's an unsworn declaration, and it's not legal material, and
22 it can be revoked.

23 Q. And is that the basis upon which you made the decision
24 in this case?

25 A. Um, partially.

1 Q. What other aspects went into your decision?

2 A. The fact Sergeant Lynch found a document signed by
3 another inmate in Mr. Jacobs' cell as part of it, and the fact
4 that Mr. Jacobs testified that he, Mr. Banks gave him the
5 copies.

6 Q. And based on that, and based on your understanding of
7 the rules and regulations of the Department of Corrections, as
8 set forth in the 801 policy, you concluded that Mr. Jacobs had
9 violated the indicated provisions of that policy?

10 A. Specifically, the contraband was property of another.
11 Inmates are not permitted to have other people's property.

12 Q. You indicated that at the time of the hearing, in
13 September of 2003, that you had occasion in the course of your
14 duties to interact with Mr. Jacobs.

15 At that time were you aware that Mr. Jacobs had filed
16 grievances against other correctional staff at SCI Pittsburgh?

17 A. No, sir, I was not. My discussions with Mr. Jacobs
18 were limited only to DC Administrative Directive 801 hearings.

19 Q. Were you aware Mr. Jacobs had filed a lawsuit against
20 DOC personnel from another Institution at that time?

21 A. No, sir, I'm not.

22 Q. Did any of the other defendants in this case approach
23 you and indicate that you should find in your misconduct
24 hearing with Mr. Jacobs, that you should find a specific way?

25 A. Absolutely not. In 30 years that I was in the -- as

1 long as I was a hearing examiner, since 1986, no one has ever
2 told me how to find at a hearing, no staff member, nobody.
3 That's one of the nice things about being the hearing
4 examiner, is that I do not work for any of the institutions.

5 My boss is Chief Counsel's office, and those are the
6 only people I answer to for making the correct decisions;
7 correct in that they are in compliance with the administrative
8 directions, and based -- my decisions are based on facts. No
9 one else is able to tell me, no one else is able to tell me
10 what to do, and no one else has ever tried.

11 Q. Thank you, sir.

12 MR. BRADLEY: No further questions.

13 CROSS EXAMINATION

14 BY MR. JACOBS:

15 Q. You stated that you -- it has never been an occasion in
16 your employment, in your interactions with the Department of
17 Corrections that a staff member has ever came to you in an
18 unethical way?

19 A. I'm saying, no one has ever told me what to make a
20 decision about, a finding of guilt or innocence at an inmate
21 misconduct hearing.

22 Q. That would have been unethical; correct?

23 A. I don't know whether it's unethical or not, sir. I can
24 tell you what anybody has told me.

25 Q. You don't know whether or not it would be unethical for

1 a guard to tell you how to find at a misconduct hearing?

2 A. You can determine whether it's unethical or not. I'm
3 telling you, it never happened.

4 Q. I'm asking you, based on the code of conduct that you
5 go by --

6 A. My code of conduct --

7 Q. Could I finish the question?

8 A. Sure.

9 Q. I'm asking you that, based on the code of conduct that
10 you go by, would it be unethical for a guard to come to you
11 and tell you how to find at a misconduct hearing?

12 A. For a guard to come to me, would it be unethical?

13 Q. And tell you how to find at a misconduct hearing?

14 A. I don't know how you would define "unethical". I'm
15 telling you, it's never happened. No one has ever tried to
16 tell me what to do in a misconduct hearing.

17 Q. Would that be unethical?

18 A. How do you define unethical?

19 Q. Well, what code of conduct do you go by?

20 A. Which one are you asking?

21 Q. Do you go by --

22 A. Which one are you asking me?

23 Q. Do you go by the Department of Corrections Code of
24 Ethics?

25 A. Certainly, I do.

1 Q. Are you bound by the Code of Ethics?

2 A. I think so, since I was an employee.

3 Q. Under the Code of Ethics, the -- would it be proper for
4 you to ignore a guard telling you how to find at a particular
5 misconduct hearing?

6 A. No; don't know, because the situation has never arose.

7 Q. I'm not asking you whether the situation ever arose or
8 not, I'm asking you that's your, your interpretation of the
9 Department of Corrections Code of Ethics, which you admitted
10 that you're bound by?

11 A. I don't remember what the Code of Ethics says.

12 Q. You don't know?

13 A. No. I don't remember what it says.

14 Q. You were with the Department of Corrections for 30
15 years, you said?

16 A. Yes, correct.

17 Q. And you're not familiar with the Code of Ethics?

18 A. I've been out of there for five, and I don't remember
19 what it says; absolutely not.

20 Q. Those 30 years working for the Department of
21 Corrections, how many times have you read the Code of Ethics?

22 A. Maybe once.

23 Q. And am I correct that staff generally carry that in
24 their pocket?

25 A. I, I don't know.

1 Q. Did you?

2 A. Absolutely not.

3 Q. Was it a pocket size?

4 A. I don't remember.

5 Q. Okay. Does that look familiar to you?

6 A. Appears to be a Department of Pennsylvania, Code of
7 Ethics, yes.

8 Q. Is that what it is?

9 A. That's what it says it is.

10 Q. Do you see No. 14?

11 A. Yes.

12 Q. Take a moment to look over that.

13 A. Okay.

14 Q. Does that refresh your recollection with respect to
15 your duty to report any type of misconduct of another
16 Department of Corrections staff?

17 A. That's what it says.

18 Q. No; does it refresh your recollection?

19 A. No.

20 Q. It doesn't refresh your recollection?

21 A. No. I told you, I read that document one time. I had
22 other things to do, other than reading Department of
23 Corrections documents.

24 Q. So, this is basically your rule book; correct? These
25 are basically the rules that you have to abide by --

1 A. Okay.

2 Q. -- in your capacity as the hearing examiner; correct?

3 A. In the hearing examiner? No. I have a different set
4 of rules. If -- I follow the Administrative Directive 801
5 when I conduct misconduct hearings.

6 Q. Okay. What I'm asking, does the Code of Ethics apply
7 in your capacity as the hearing examiner?

8 A. I'm sure. I'm sure it does.

9 Q. Okay. And you're saying that this doesn't refresh your
10 recollection --

11 A. No.

12 Q. -- as to whether or not these particular rules were
13 being applied at that time?

14 A. I don't understand the question, sir.

15 Q. Were you, were you governed by the Code of Ethics?

16 A. I assume that I was. I assume that I was.

17 Q. You assume that you were?

18 A. Yes.

19 Q. Are the rules that you're supposed to abide by
20 important to you?

21 A. Absolutely.

22 Q. Isn't it your duty to know those rules?

23 A. I suppose so.

24 Q. Under the Code of Ethics?

25 A. Do you expect me to remember everything that I was told

1 in 30 years? I can't. I've been out of there for five years.
2 Even the specifics of the Administrative Directive 801, I
3 don't remember anymore.

4 When I was doing it every day, I knew what was going on
5 about what needed to be done. Now I'm retired, and I don't
6 care about it anymore.

7 Q. Did you care about it then?

8 A. Absolutely. That was my job. That was my
9 responsibility, to make sure that I conducted my misconduct
10 hearings fairly and within the requirements.

11 Q. Could you just answer the question?

12 A. What's the question?

13 Q. Did you care about it then?

14 A. Care about what?

15 Q. About the Code of Ethics.

16 A. Sure.

17 Q. But you don't remember any of the rules?

18 A. No.

19 Q. And you also state on direct examination that you're
20 not employed by the Department of Corrections?

21 A. I did not state that.

22 Q. What did you? Refresh my recollection.

23 A. I said, I'm not an employee of the State Correctional
24 Institution at Pittsburgh. I am employed by the Chief
25 Counsel's office. From the time I was --

1 Q. At the time in question?

2 A. From the time I became a hearing examiner, I was
3 employed by the Department of Corrections, but the Chief
4 Counsel's office was my supervisor. So, I was not employed by
5 any State Correctional Institution. And I explained why we
6 were not employed by them, we are not subject to them.

7 Q. And where were these misconduct hearings taking place?

8 A. At SCI's; State correctional institutions.

9 Q. Within the prisons?

10 A. Yes.

11 Q. And who escorted the prisoners to these misconduct
12 hearings?

13 A. Correctional officers.

14 Q. And did you interact with the correctional officers?

15 A. How do you define "interact?"

16 Q. Speak to them.

17 A. Certainly.

18 Q. Eat with them?

19 A. Sometimes.

20 Q. Call them on the phone?

21 A. No.

22 Q. You --

23 A. You mean outside of work?

24 Q. Outside of work.

25 A. No.

1 Q. Never developed a friendship with any of the
2 correctional officers?

3 A. How do you define "friendship"?

4 Q. A friendship; somebody you talked to, somebody --

5 A. Somebody I hang out with?

6 Q. Somebody you share with, somebody you hang out with?

7 A. No.

8 Q. Somebody you call on the phone, depend on?

9 A. Not correctional officers; no, sir, I didn't.

10 Q. Any of the defendants in this case?

11 A. No, sir.

12 Q. You haven't developed friendships with any of them?

13 A. No, sir.

14 Q. Even with ones that worked at SCI Pittsburgh?

15 A. No, sir.

16 Q. For years and years at a time?

17 A. As you define "friendship", no.

18 Q. How to you define "friendship"?

19 A. I'm asking you how you want me to respond to it.

20 Q. I'm asking you, how do you define "friendship"?

21 A. Someone that I socialize with outside of work.

22 Q. Okay.

23 A. None of the defendants do I socialize with outside of
24 work.

25 Q. In 30 years?

1 A. In 30 years.

2 Q. Okay.

3 A. I've never been to any of their houses, and none of
4 them have ever been to my house.

5 Q. Okay. I hear you.

6 And you stated that you spoke to your Office of Chief
7 Counsel. You mean Robert Bittner?

8 A. Yes.

9 Q. And you said that he told you that the documents in
10 question, the unsworn declaration is not a legal document?

11 A. He said that under our policy, those are not legal
12 documents. They could be confiscated.

13 Q. They could be confiscated?

14 A. Yes.

15 Q. Where are those legal documents at?

16 A. I don't know.

17 Q. You don't know?

18 A. No, sir, I don't.

19 Q. What did you do with them?

20 A. I left them there.

21 Q. You were in position of them; correct?

22 A. I put them back where I had found them; yes.

23 Q. Found them?

24 A. Where they were when I went to look at them.

25 Q. Where did you get them from?

1 A. I believe they were in the lieutenant's office.

2 Q. And you used these documents as part of the misconduct.

3 They were evidence in a misconduct hearing; correct?

4 A. That's correct.

5 Q. And --

6 A. Did I bring them?

7 Q. Do you --

8 A. Do I routinely bring evidence to hearings? No.

9 Q. What do you do with the evidence after the misconduct
10 hearing?

11 A. I don't do anything with it.

12 Q. You have to do something with it. It's in your
13 possession?

14 A. I left it where it was.

15 Q. You just leave evidence lying around after the
16 misconduct hearing?

17 A. Yeah.

18 Q. And you don't --

19 A. I left it where I found it. It was --

20 Q. Okay.

21 A. It was in the lieutenant's office. I left it in the
22 lieutenant's office.

23 Q. Okay. You don't know what happened to it after that?

24 A. Absolutely not.

25 Q. Then, you don't remember the nature of the documents?

1 A. They were unsworn affidavits or something. And they
2 were signed, I believe they were signed by Mr. Banks.

3 Q. But you don't remember what was said in those
4 documents?

5 A. No, sir, I don't.

6 Q. You don't care about what was said in those documents?

7 A. No, sir. They weren't notarized.

8 Q. You remember that?

9 A. Yes, sir.

10 Q. Specifically?

11 A. Yes.

12 Q. How do you remember that?

13 A. Because that -- Mr. Bittner asked me that question,
14 were they notarized.

15 Q. How many years ago was this?

16 A. 2003.

17 Q. You remember that --

18 A. Yeah, I do.

19 Q. -- specific conversation?

20 A. I do.

21 Q. That they weren't notarized?

22 A. Right. Want to know why? I'll be glad to answer that
23 question, if you want to ask it.

24 Q. Don't worry.

25 A. Okay.

1 Q. Is your statement today that under the DOC's policy, an
2 unsworn declaration is contraband?

3 A. It is property of another. That document was property
4 of another. It was revoked.

5 Q. Yes, or, no?

6 A. Yes, or, no?

7 Q. Yes, or, no. I want you to answer the question.

8 THE COURT: Answer the question, yes, or, no.

9 BY MR. JACOBS:

10 Q. Yes, or, no?

11 A. What's the question?

12 Q. I'm going to ask you the question.

13 A. What's the question?

14 Q. Is it your statement that it is the policy of the
15 Department of Corrections to label unsworn declarations
16 contraband?

17 A. No it's, not a policy. It was a decision that was made
18 at that specific instance.

19 Q. For me?

20 A. No, for those documents, period.

21 Q. Pertaining to me?

22 A. I guess they pertained to you.

23 Q. I was singled out.

24 A. You were? You're not the only person I've conducted
25 misconducts for, Mr. Banks -- Jacobs, excuse me.

1 Q. Okay. You said that for this particular occasion those
2 documents were labeled contraband?

3 A. That case, they were. Those documents were labeled.

4 Q. Okay. You agree that they were contraband?

5 A. Yes.

6 Q. For this particular occasion?

7 A. On that instance, yes.

8 Q. Because somebody came to you and told you --

9 A. No, sir.

10 Q. -- what was going on?

11 A. Absolutely not. Absolutely not, sir.

12 Q. Could you just answer the question, please.

13 THE COURT: Wait for him to ask the question, and
14 then, answer it.

15 BY MR. JACOBS:

16 Q. And conducting all these hearings; said you conducted
17 approximately 220, 250 hearings a month or a week; what was
18 that?

19 A. A month.

20 Q. A month. And those hearings were conducted in the
21 prison environment on the -- a lot of them in the RHU;
22 correct?

23 A. Yes.

24 Q. And in that time frame, you interacted with the prison
25 guards?

1 A. Certainly.

2 Q. And for this particular misconduct, prison guards did
3 come to you and encourage you how to find?

4 A. Absolutely not.

5 Q. In this particular misconduct?

6 A. Absolutely not.

7 Q. And that is --

8 A. I resent the implication.

9 THE COURT: Just answer the questions.

10 Q. Answer the questions.

11 THE WITNESS: The answer was, no, ma'am. I
12 apologize, Your Honor.

13 BY MR. JACOBS:

14 Q. And that was the reason that you agree that these
15 particular misconducts -- these particular documents were
16 contraband; correct?

17 A. I believe I answered the question. The answer is, no.

18 Q. And on the other document, which was Defendant's
19 Exhibit -- your rationale form -- Defendant's Exhibit D.

20 A. Okay.

21 Q. Okay.

22 A. I can see it.

23 Q. You stated that -- it states on there that the witness
24 was sworn in?

25 A. Yes.

1 Q. Meaning me?

2 A. Yes.

3 Q. And that I took an oath?

4 A. Yes.

5 Q. That what you mean by "sworn in"?

6 A. Yes. Do you swear or affirm the information you're
7 about to give me is the truth.

8 Q. Okay. And you also state that -- somewhere within that
9 document you state that you still believe the report of
10 Mr. Lynch?

11 A. Yes.

12 Q. Do you know Mr. Lynch?

13 A. Do I know who Mr. Lynch is?

14 Q. Yes.

15 A. Today, I do.

16 Q. Did you know who he was at that time?

17 A. No. In fact, when I came into court today, came into
18 court on Monday, he had to identify himself to me. I didn't
19 know who Sergeant Lynch was.

20 Q. Okay. But you still found him to be more credible than
21 me?

22 A. That is correct.

23 Q. And you didn't know whether he was a credible person or
24 not?

25 A. That's correct. But that was not the only evidence.

1 Q. You just knew --

2 A. No, sir.

3 Q. You just knew he was a correctional officer.

4 A. No, sir.

5 Q. And you just knew that I was a prisoner; correct?

6 A. Incorrect.

7 Q. And you didn't care whether or not what he said was
8 true; did you?

9 A. Yes, I did.

10 Q. You didn't care whether or not he was using a
11 misconduct as a retaliatory tool; did you?

12 A. Yes, I did.

13 Q. You didn't care if the misconduct was issued to
14 obstruct my access to the Courts; did you?

15 A. Yes, I did care.

16 Q. You routinely found prisoners guilty; didn't you?

17 A. No.

18 Q. Well, out of 250 hearings you hold in a month,
19 approximately, give my an estimate.

20 A. I have no idea. I don't keep track of those. It's not
21 a score card. I don't keep score.

22 Q. One?

23 A. I don't know.

24 Q. 20?

25 A. I don't know.

1 Q. 50?

2 A. Don't know.

3 Q. Hundred?

4 A. Don't know.

5 Q. 150?

6 A. Still don't know.

7 Q. 200?

8 A. Still don't know.

9 Q. No idea --

10 A. No, sir, I don't.

11 Q. -- how often you found prisoners guilty?

12 A. No, sir. I don't keep track of it.

13 Q. Do you know whether the Department of Corrections gets
14 the definition for what contraband is?

15 A. No.

16 Q. So, how is it possible for you to determine whether or
17 not something is contraband, if you're not aware of where the
18 definition comes from?

19 A. The definition was found in the Administrative
20 Directive 801. I don't know where that came from, and I don't
21 know how they decided what items were contraband.

22 MR. BRADLEY: Your Honor, I don't have a problem
23 with Mr. Jacobs exploring this avenue, but the document he's
24 using, he's intending to offer, is not what was in effect at
25 the time of the hearing.

1 THE COURT: Why don't we show those to the witness.
2 We won't show them to the jury yet. And he can ask if -- the
3 plaintiff can ask him if the policy had changed, if that was
4 the same one he remembers. If he doesn't, then, I'll deal
5 with it.

6 BY MR. JACOBS:

7 Q. Do you recognize that document?

8 A. Do I know what it says; am I familiar with it?

9 Q. Do you know what that document is?

10 A. It says it's the policy statement, DC Administrative
11 Directive, Inmate -- DC Administrative Directive 203, searches
12 of inmate's cells.

13 Q. And this particular misconduct that was issued to me
14 dealt with the search of my cell; correct?

15 A. Yes.

16 Q. And in order for you to determine whether or not the
17 receipt of these documents was proper, it would have to be
18 viewed in the context of searches of inmate's cells; correct?

19 A. I don't understand the question.

20 Q. I mean --

21 A. Are you trying to ask me was the cell search legal; is
22 that what you're trying to ask?

23 Q. No, that is not what I'm trying to ask.

24 A. Then, I don't understand the question.

25 Q. If a prison guard violates a DOC policy, and in

1 conducting a cell search, is that something that you factor
2 into your determination of whether a person is guilty or not?

3 A. I'm -- you're speaking hypothetically, and I really
4 don't understand what you're asking.

5 Q. Well, in this particular case did you factor into
6 whether or not Mr. Lynch may have had an improper motive for
7 taking these documents?

8 A. No, sir. I had no reason to. Nor did you raise
9 anything at the hearing.

10 Q. Do you generally factor that into your determination?

11 A. Factor what?

12 Q. Whether a guard may have been improperly motivated?

13 A. How would I know whether the guard is improperly
14 motivated or not?

15 Q. I'm not asking you whether you know it. I'm asking you
16 whether you factor that into your determination. Do you
17 question it?

18 A. Not unless I know it, no. Unless I have a reason not
19 to believe it, I'm going to believe it.

20 Q. If you look on the second page of that document, where
21 it says, "contraband".

22 A. Yes.

23 Q. Are you familiar with the particular title created in
24 the highlighted section?

25 A. Meaning the 18 PS 5123?

1 Q. Correct.

2 A. I have no idea what that is. It's some legal law, but
3 it's not my area of expertise.

4 Q. So what you're saying is the Department of
5 Corrections -- first, let me ask you this. Do you agree with
6 me that that policy governs how guards are supposed to conduct
7 searches of inmates and cells?

8 MR. BRADLEY: Your Honor, I'm going to object, not
9 so much that it is, but that is the policy, that was in place
10 at the time.

11 THE COURT: You'll have to lay a foundation for this
12 witness, if this was the same provision.

13 BY MR. JACOBS:

14 Q. Are you familiar with a policy at the time in question
15 governing searches of inmates and cells?

16 A. Am I aware that one existed?

17 Q. That one existed; that one did exist.

18 A. I assume that one existed. Can I quote it for you?
19 No, I'm not able to do that.

20 Q. Okay. And do you remember -- do you state that it
21 would be under that same title and same DC ADM-203 policy?

22 A. No, I could not state that. I don't know.

23 Q. But I mean, would it still have the same --

24 A. I don't -- I assume that it would. I don't know for
25 sure.

1 Q. Well, for example, the DC ADM-804, hasn't there always
2 been grievance procedures?

3 A. I believe it has.

4 Q. Hasn't the DC ADM-801 always dealt with inmate
5 discipline?

6 A. Yes.

7 Q. So what I'm asking you, the DC ADM-203, hasn't that
8 always dealt with searches of inmates and cells?

9 A. The answer is, I don't know.

10 Q. But --

11 A. Because I don't deal with that on a daily basis.

12 Q. You don't deal with grievance procedures --

13 A. No.

14 Q. But you just said --

15 A. 804, yes.

16 Q. You just said it is always dealt with. The number has
17 not changed?

18 A. To the best of my recollection, yes.

19 Q. Okay. But you never dealt with grievances either?

20 A. No.

21 Q. As a hearing examiner?

22 A. No.

23 Q. But you just don't remember whether or not that number
24 would change?

25 A. I don't know.

1 Q. Okay. You said, you testified on direct about the
2 inmate handbook.

3 A. Um-hum.

4 Q. Which is given to all inmates?

5 A. Yes.

6 Q. Isn't that part of the rules that would be given to the
7 inmates?

8 A. I assume so. What's in the handbook changes from time
9 to time, but the part that I'm concerned with, and I was
10 sharing with the jury, was the fact that there is a section
11 that deals with discipline, disciplinary procedures.

12 Q. Okay.

13 A. And that changes from time to time also.

14 Q. And contraband specifically, is there any other rule
15 book that defines contraband?

16 A. Not that I'm aware of.

17 Q. So, if there's no rule book that defines contraband,
18 how do you determine when something is contraband and when
19 something is not contraband?

20 A. No. In the inmate handbook, in the 801, there's a
21 section that deals with contraband, and that's -- it clearly
22 lays out. If you have that document, I'll be glad to review
23 that document and tell you what the contraband is.

24 Q. But you don't want to talk about the DC ADM-203?

25 A. I don't want to talk about 203, because I'm not

1 familiar with it. I could read you what it says here.

2 Q. 30 years for the Department of Corrections.

3 A. Yes.

4 MR. BRADLEY: Your Honor, I'm going to object,
5 because -- my objection is based on the date on the policy,
6 not what the content is.

7 THE COURT: I understand. But it was the Court's
8 recollection there was a stipulation that these policies were
9 the same ones that were --

10 MR. BRADLEY: My understanding is that I provided
11 him with policies that were current as of the time of these
12 events.

13 THE COURT: Yes. And isn't this what you provided?

14 MR. BRADLEY: I don't believe it is.

15 MR. JACOBS: The only policy they gave me.

16 THE COURT: Why don't we -- we'll proceed with a
17 line of questioning, and you can look into that and get back
18 to me.

19 BY MR. JACOBS:

20 Q. You found me guilty of loaning and borrowing?

21 A. Yes.

22 Q. Takes two to loan and borrow; correct?

23 A. Correct.

24 Q. Correct?

25 A. Correct.

1 Q. You need at least two people?

2 A. Yes.

3 Q. Was it odd to you that I was the only one charged with
4 loaning and borrowing?

5 A. I don't know whether you were charged with it or not.

6 Q. Well, you just said you found me guilty.

7 A. I said -- I'm sorry. I don't know whether the other
8 person was charged with that or not.

9 Q. If the other person was charged with it, you would have
10 been the one to be the hearing examiner; correct?

11 A. Not necessarily. I was the hearing examiner, but not
12 necessarily. If that, if that other document, that other
13 misconduct was sent to informal resolution, that would not
14 come to me.

15 Q. Okay. So, you wouldn't know about it?

16 A. Correct.

17 Q. So, would you disagree with me if I said that Mr. Banks
18 was not given a misconduct?

19 A. Would I disagree with you?

20 Q. Yes.

21 MR. BRADLEY: Your Honor, that's -- he's attempting
22 to establish something that he has no foundation for.

23 MR. JACOBS: There's been testimony on it.

24 THE COURT: I think you should direct the question
25 to whether he has any knowledge about whether Mr. Banks ever

1 had a misconduct.

2 MR. JACOBS: Okay.

3 BY MR. JACOBS:

4 Q. Do you have any recollection as to whether or not
5 Mr. Banks was given a misconduct in relation to this charge of
6 loaning and borrowing?

7 A. No.

8 Q. And if me and him received the same charges and the
9 same misconduct on the same date, regarding the same incident,
10 what is the likelihood of his misconduct going to informal
11 resolution and my misconduct coming to you?

12 A. I don't know that. You would have to talk to the shift
13 commander about that who made the decision.

14 Q. I'm asking you. I'm asking you.

15 A. You're asking me?

16 Q. Is that normal; is that normal practice?

17 A. I don't know. If it goes to informal resolution, it
18 doesn't come to me.

19 Q. I understand that.

20 A. You're asking me to testify about what somebody else
21 did, and I don't know.

22 Q. I'm asking you to testify about if two prisoners in the
23 same case, with the same charges, same incident, are served a
24 misconduct, is it normal procedure for one misconduct to go
25 somewhere else, and one misconduct to go informal resolution

1 and one misconduct to go to you?

2 A. I can't answer that question.

3 Q. You don't know?

4 A. I don't know.

5 Q. You don't remember?

6 A. I don't know.

7 Q. The section that you referred to in the 801 which you
8 said defines contraband --

9 A. Um-hum, yes.

10 Q. -- does that, property of another --

11 A. Does property of another appear there as a charge?

12 Q. Correct.

13 A. Yes.

14 Q. And is that what you base your decision on?

15 A. Yes.

16 Q. Okay. Just because a person's name is on something,
17 doesn't mean that it belongs to that person; does it?

18 A. Yes.

19 Q. So, if a person -- so, if my name and Mr. Bank's name
20 is on a document, who does the document belong to, then?

21 A. That would depend.

22 Q. Depend on what?

23 A. Where it was found and who claimed it.

24 Q. Well, Mr. Banks was offered as a witness. Do you
25 remember that?

1 A. Yes.

2 Q. And Mr. Banks was willing to testify that the documents
3 did belong to him?

4 MR. BRADLEY: Objection, Your Honor. He can't
5 testify as to what Mr. Banks would have testified to at the
6 hearing.

7 MR. JACOBS: Well, he -- it's in the document.

8 MR. BRADLEY: He can present the document.

9 THE COURT: Do you have the document?

10 MR. JACOBS: It's up there.

11 THE COURT: Why don't we show that to him. Could
12 you refer to the document number, the exhibit number?

13 BY MR. JACOBS:

14 Q. I'm showing to you what is marked as Plaintiff's
15 Exhibit No. 17.

16 THE COURT: Thank you.

17 Q. Do you recognize that document?

18 A. Yes, I do. Yes, I do.

19 Q. What is that document?

20 A. It's a Department of Corrections inmate witness sheet
21 form.

22 Q. Did you see a section where I requested that Mr. Banks
23 be produced as a witness?

24 A. Yes, I do.

25 Q. And can you see the offer of what his testimony would

1 be?

2 A. Yes, I do see that.

3 Q. What does it say?

4 THE COURT: Can you blow it up a little bit, please.

5 A. Because this inmate will verify that said documents
6 were mine and that he filled them out for me.

7 Q. So, Mr. Banks would have been disclaiming ownership of
8 those documents; correct?

9 A. I don't know what he would have told me. This is what
10 you said he would have told me.

11 Q. Is that how you interpret my offer? Do --

12 A. Believe.

13 Q. Not whether or not you believe it, but do you interpret
14 my offer of his testimony as that he was disclaiming ownership
15 of those documents?

16 A. That's what you have written there, yes.

17 Q. I'm asking you, did you interpret it that way?

18 A. Interpret it how?

19 Q. That he was disclaiming ownership of those documents.

20 A. I can interpret it as that is what you wrote there.

21 Q. Did Mr. Banks -- if my name is on a document and
22 Mr. Banks' name is on a document, and Mr. Banks is disclaiming
23 ownership of those documents, isn't that relevant to
24 ownership?

25 A. It depends on the situation. We're talking about this

1 situation here.

2 Q. If Mr. Banks disclaims ownership of those documents,
3 does that go to the question of whether I was in possession of
4 property of another?

5 A. No.

6 Q. No?

7 A. It was in your cell. It had his name on it. You did
8 not have permission to have it.

9 Q. So --

10 A. So, it's contraband. It's property of another.

11 Q. So, if something with another prisoner's name on it is
12 found in my cell, it's labeled contraband?

13 A. Yes. It can be.

14 THE COURT: Mr. Jacobs, we just have about two
15 minutes before it's quarter of. So, if you have another
16 question. Because we can bring the witness back on Monday.

17 MR. JACOBS: No, I'm almost done.

18 THE COURT: Okay.

19 BY MR. JACOBS:

20 Q. The fact is, isn't it, that you knew that these
21 documents weren't contraband? Did you?

22 A. Contraband.

23 Q. You knew; yes, or, no?

24 A. Yes. The items in question are contraband, yes.

25 Q. You knew that these documents weren't contraband?

1 A. That's incorrect.

2 Q. You knew that they were legal documents?

3 A. No, sir, they are not.

4 Q. You read the documents?

5 A. I looked at them, yes.

6 Q. And you saw that Mr. Banks was verifying an incident
7 which he witnessed?

8 A. I did not read it. I don't remember. I saw his name
9 on it.

10 Q. You did not read it?

11 A. I looked at it, but did I read it to remember it; no.

12 Q. And it was your purpose to assist Mr. Lynch in
13 concealing and furthering retaliation?

14 A. Absolutely not. No.

15 MR. JACOBS: No further questions, Your Honor.

16 THE COURT: Do you have other questions?

17 MR. BRADLEY: I do, Your Honor.

18 THE COURT: Will it be lengthy?

19 MR. BRADLEY: It will take probably about five
20 minutes.

21 THE COURT: Does any juror have to leave?

22 Okay. We can stay another five minutes.

23 REDIRECT EXAMINATION

24 BY MR. BRADLEY:

25 Q. Regarding the request to have Mr. Banks called as a

1 witness, you did write a response to that; did you not?

2 A. Absolutely.

3 Q. And --

4 A. I don't have that on my screen here. It's a
5 different -- where it says, testimony not relevant, not
6 required?

7 Q. Yes.

8 A. Yes. Testimony not required to determine guilt or
9 innocence. And the reason for that is, if you would go back
10 to the previous document of Mr. Jacobs' written version, where
11 he explains how he became -- how the stuff got to him, that's
12 why I made that decision.

13 Q. Putting up what's marked Plaintiff's Exhibit 16.

14 A. That's not what I was referring to, Mr. Bradley. The
15 hearing report sheet.

16 Q. The report sheet itself, Plaintiff's Exhibit D. I
17 don't know what the numbers are.

18 A. Right. Mr. Jacobs said to me at the hearing, testified
19 Mr. Banks gave him copies of material he submitted to the
20 Courts. That's how I determine that it was Mr. Bank's
21 property.

22 Q. Does it indicate there that Mr. Jacobs told you that
23 this was his property, not the property of Mr. Banks?

24 A. No, sir, he did not.

25 Q. Would you have made the same decision in this matter if

1 it had not involved Mr. Jacobs, if the same facts had been
2 presented?

3 A. Absolutely.

4 Q. So the fact that Mr. Jacobs was the subject of the
5 misconduct had no bearing on your decision?

6 A. No, sir. This was just another basic routine hearing
7 that I did.

8 Q. Mr. Jacobs' cross examination, I don't know that he
9 used the term "rubber stamp" at this point, but essentially
10 insinuated that you just did whatever the guards wanted, or
11 that you just came to the conclusion that he was guilty just
12 because that was what was done as a regular course.

13 Isn't it true that in this case it gave you pause, to
14 the point that you actually called your supervisor to obtain
15 guidance on what you should do?

16 A. Absolutely.

17 Q. And I believe at one point you were about to explain
18 why you remembered a portion of the conversation related to
19 that.

20 A. Only because of what we were dealing with, with a
21 document here that may come back to haunt me somewhere down
22 the road in proceedings such as this one, I want to make sure
23 I made an informed decision. That's why I sought guidance
24 from somebody more knowledgeable than I am.

25 Q. And based on that guidance, you came to the decision

1 you did?

2 A. Yes.

3 Q. And again, was that based on the fact that Mr. Jacobs
4 was a subject of the misconduct?

5 A. Absolutely not.

6 Q. Was that based on any outside influence from any of the
7 defendants?

8 A. Absolutely not.

9 Q. And it was your determination that this, these
10 documents were property of another because they contained the
11 signature of Mr. Banks?

12 A. That's correct. And they were in Mr. Jacobs'
13 possession.

14 MR. BRADLEY: Thank you. That's all.

15 BY MR. BRADLEY:

16 A. Can I add one more thing? Mr. Jacobs is single-celled
17 in that unit, so there was nobody else in his cell who would
18 be in possession of them, other than him.

19 THE COURT: Mr. Jacobs, do you have a few brief
20 questions?

21 MR. JACOBS: No, Your Honor. No.

22 THE COURT: You don't? You're done with this
23 witness?

24 MR. JACOBS: Yes.

25 THE COURT: Okay. Members of the jury, we will not

1 be in session tomorrow.

2 I'm going to ask that you return here on Monday at
3 9:15.

4 Remember the instructions I've given you. You're
5 not to read any newspaper reports about what may be happening
6 here. You are not to discuss the case among yourselves, at
7 home, at work. Simply no discussions whatsoever.

8 You're not to do any research or investigation on
9 your own. And you still need to keep an open mind, because
10 you've not heard all the evidence or the final instructions
11 and the closing arguments.

12 With that, I'm going to ask you to have a nice
13 weekend, and we'll see you Monday.

14 Please rise for the jury.

15 (Whereupon, jury retired.)

16 THE COURT: Please be seated. We just have to wait
17 for the jurors to leave.

18 You're excused. I just need to verify, all the
19 jurors have left?

20 MATTHEW FERGUS, Law Clerk: Yes.

21 THE COURT: We have a few matters that we need to
22 deal with. The first are the three additional claims that the
23 plaintiff is asserting. We haven't had the argument on that.

24 Did you get a chance, Mr. Jacobs, to review the
25 written submission of the defendants?

1 MR. JACOBS: Yes, Your Honor.

2 THE COURT: Have you had a chance to put anything in
3 writing to respond to that?

4 MR. JACOBS: Um, I haven't had -- I haven't had any
5 type of ability to research, or anything like that.

6 THE COURT: Okay. Will you have time tomorrow; will
7 he be --

8 MR. JACOBS: I have all the time, but they don't
9 give me access to no law library, no law books, or I mean, I
10 don't know how I'm expected to respond.

11 THE COURT: Where he is located now, is there a law
12 library?

13 MR. BRADLEY: Is it possible to have him taken to
14 the law library?

15 STATE LIEUTENANT: Yes.

16 MR. BRADLEY: Additionally, Your Honor, his property
17 is being brought up from Fayette to SCI Pittsburgh for him to
18 review tomorrow.

19 THE COURT: Make sure it's all there.

20 MR. JACOBS: Your Honor, strongly, I object to this.

21 THE COURT: Well, wait and see if it all comes.

22 MR. JACOBS: Your Honor, I was in this position
23 before when I was at Allegheny County Jail, as I was trying to
24 explain to you last time, and I also had a statement by the
25 investigator that was sent up to SCI Fayette personally to

1 separate my legal property from my personal property.

2 11 books of legal property was sent to Allegheny
3 County Jail; six of them got lost. And I mean, I --

4 THE COURT: I understand. But we're trying now to
5 make sure you have your documents. They say they are bringing
6 them up tomorrow. If there's a problem, you let me know
7 Monday, and I'll take appropriate action.

8 MR. JACOBS: I mean, in the past they, they have
9 pulled this same move. And I mean, what I'm getting, Your
10 Honor, is that I should have been notified that I was going to
11 be held at SCI Pittsburgh, rather than being told that I was
12 going to be sent back and forth. And I believe that this is a
13 tactic being used to obstruct the following case.

14 THE COURT: Well, is there any way he could be taken
15 back to Fayette? It would be either tonight or in the
16 morning, so that he can have his materials, and then, bring
17 with him what he needs for Monday?

18 KRISTIN REISINGER: I can the Institution.

19 MR. WILLIG: Now we're going to -- the risk we run
20 of -- never mind, Your Honor.

21 MR. BRADLEY: We can try, Your Honor.

22 And I would note, just in terms of the allegations
23 that this is a tactic --

24 THE COURT: I'm not, I'm not going -- I'm just
25 trying to avoid future problems.

1 MR. BRADLEY: I understand.

2 THE COURT: I mean, if we can avoid having an issue
3 down the road, that's the best thing to do; otherwise, we'll
4 have to have more hearings and more issues, and if there's a
5 way to eliminate any question about whether Mr. Jacobs has all
6 the materials that he had when he was at Fayette, and how they
7 are transported, it's best to try to take that extra step now,
8 rather than having, you know, further litigation over this
9 matter.

10 So, if there's a way to do it, that would be
11 appreciated.

12 MR. BRADLEY: Understood, Your Honor.

13 THE COURT: Okay. So if there's a way for
14 Mr. Jacobs -- I don't know if it's maybe too late tonight, but
15 if he can be taken back either tonight or tomorrow morning and
16 be given access to the law library, either here at FCI
17 Pittsburgh or at FCI Fayette, then, when he comes back here he
18 can have all the materials with him that he will need over the
19 course of the next two weeks, if he's going to be staying
20 here.

21 Okay. If you could do that, that would be
22 appreciated.

23 Would you appreciate that?

24 MR. JACOBS: Yes. Yes, Your Honor, greatly.

25 MR. BRADLEY: We'll make our best efforts, Your

1 Honor.

2 THE COURT: That's all we can do, is ask for the
3 best efforts. If we can't, then, we'll have to deal with, did
4 it all come, didn't it come. If there's a way to avoid that,
5 I would appreciate it. I know Mr. Banks would, too.

6 MR. BRADLEY: Mr. Jacobs.

7 THE COURT: Mr. Jacobs, I'm sorry. Mr. Banks was
8 testifying today, and his last documents, those last documents
9 involved him.

10 Okay. So, that's what we're going to try to do, is
11 make arrangements for you to go back to Fayette, either
12 tonight or tomorrow morning. And you'll be there over the
13 weekend and be returned here for Monday morning. Okay.

14 Now, we have to get some time set aside to deal
15 with -- so, then, you should be able to give something, or at
16 least be prepared to argue orally on those three claims on
17 Monday.

18 MR. JACOBS: Correct.

19 THE COURT: Okay. You indicated, Mr. Bradley, that
20 you have a motion for judgment as a matter of law that you
21 wish to assert in this case, and you had started with respect
22 to the retaliation claim, and you said you had -- does it go
23 for the other claims as well, you want to make one?

24 MR. BRADLEY: Yes, Your Honor.

25 THE COURT: The best thing, I think, to do, because

1 they are extensive, and there are a number of cases you want
2 to rely on, you want the Court to review and read, if you
3 could put something together tomorrow, and then, have it
4 submitted to the Court on Monday morning, then, I can have the
5 cases pulled, Mr. Jacobs will have a chance to look at them.

6 I mean, that's one of the difficulties when you do
7 have someone that's incarcerated, and he has to have a fair
8 opportunity to respond to the arguments. So, you'll need to
9 address the, the factual background that you believe supports
10 the position.

11 If you could identify for each claim what the
12 elements of the claim are, and you want -- and why you believe
13 as a matter of law that that particular element has not been
14 met, and the appropriate citations to authorities. And if you
15 have cases, if it's not too difficult, if any particular cases
16 you would have printed that you're relying on, I think that
17 would be helpful as well for all the parties, just to expedite
18 everything for everyone.

19 MR. BRADLEY: I will do that, Your Honor.

20 THE COURT: Okay? Then, you'll have an opportunity
21 to look at that. And then, I'll be able to rule on it at the
22 end of the trial. Okay?

23 MR. BRADLEY: Very good.

24 MR. JACOBS: End of the trial, you said? At the end
25 of the trial, you said?

1 THE COURT: At the end of the trial, right. At this
2 stage we already have the jury here. I need to make sure the
3 evidence phase is done. If I have to delay for a day or two
4 to do that, then, these jurors are inconvenienced. I think
5 it's better just to proceed with the trial. I can reserve the
6 ruling on that motion, on that motion. And we'll give the
7 parties appropriate time to review it and present their
8 argument.

9 This is -- it's difficult when someone is
10 incarcerated, but we need to have at least a fair opportunity
11 for Mr. Jacobs to review the issues that are raised, and to be
12 able to respond.

13 MR. BRADLEY: Certainly, Your Honor.

14 THE COURT: Okay. So I think those are the
15 remaining matters that we have at this stage.

16 MR. BRADLEY: Your Honor, I did have one thing I
17 wanted to present.

18 THE COURT: Okay.

19 MR. BRADLEY: During the testimony of Mr. Jacobs,
20 Mr. Lyons, Mr. Banks, and Mr. Edwards, there was a lot of talk
21 about what was happening in this unit. And I believe that
22 Mr. Jacobs, by presenting that testimony, particularly
23 regarding suicides, regarding denial of meal privileges,
24 showers, a number of other things that came in beyond the
25 scope of the Court's ruling, that I should be permitted, as

1 long as supervisor liability is still a, a claim in this case,
2 or a basis for liability, that the Department should be able
3 to offer testimony about the nature of this unit, and why some
4 of those things were occurring, to explain that it was not
5 because those inmates were engaged in grievance activity or
6 litigation activity, but it was because of the nature of their
7 behavior, the nature of their inability to adjust in the
8 prison system.

9 THE COURT: Mr. Jacobs?

10 MR. JACOBS: Well --

11 THE COURT: I mean, I did limit the scope of it to
12 that unit, in terms of the description. So now, the question
13 is --

14 MR. JACOBS: They didn't.

15 THE COURT: -- that your witnesses have opened the
16 door.

17 MR. JACOBS: Well, as I recall, whenever they did
18 veer off into other issues that weren't relevant, you
19 intervened and stopped them from doing that, and I redirected
20 their attention to what I -- what the issues were in the case.
21 And as I recall, each witness did focus on the time frame, but
22 then, instructed by the Court and instructed by me.

23 THE COURT: I think it's particularly the one
24 witness who was talking about observing the suicide and --

25 MR. JACOBS: That didn't even happen in the LTSU,

1 so. That happened in RHU, so that his grounds for that are
2 frivolous, that it happened in the LTSU.

3 MR. BRADLEY: Mr. Jacobs himself testified about a
4 suicide, and I came to learn that that actually occurred at
5 Fayette in 2004.

6 MR. JACOBS: And a retaliation that led up to the
7 suicide began at SCI Pittsburgh. But what, what value, what
8 relation does the nature of the unit have to do.

9 THE COURT: This is what I want you to focus on,
10 Mr. Bradley. You have a proffer. I want you to put the
11 proffer in writing as to exactly what the nature of the
12 testimony will be. And then, if it's true that the suicide
13 that Mr. Edwards -- I believe was Mr. Edwards testified about
14 that, that that was on a different unit, if we can have a
15 stipulation that that unit was not the unit that Mr. Banks was
16 on, and that they are to disregard that testimony, then, I
17 can, you know -- maybe that's another way that we don't have
18 to have another, you know, extension of the trial and getting
19 off into the nature of the unit.

20 MR. JACOBS: As I recall, though, Your Honor, the
21 witness testified -- Mr. Edwards testified that
22 Defendant Giddens intimidated him into not testifying about
23 that particular suicide. So, you can't tell the jury not to
24 dis -- to disregard that testimony.

25 THE COURT: I think, see the problem is now, if

1 that's going to be coming in like that, and you're correct,
2 that was -- you reminded me that was the nature of the
3 testimony, then, it's probably fair to have some description
4 of the various units that are at issue.

5 MR. BRADLEY: Additionally, Your Honor --

6 THE COURT: So there will be a proffer. So, you can
7 look at it, and we'll see exactly what the nature of the
8 testimony will be.

9 MR. BRADLEY: I would also like to offer, I've been
10 informed that not only SCI Pittsburgh, but the entire
11 Department of Corrections has received an accreditation from
12 the American Corrections Association, and that's based on a
13 independent audit of the institutions, and there are various
14 factors that must be met. And it's a fairly high standard
15 that must be met. The fact that Secretary Beard is still a
16 defendant in this case, and the allegations --

17 THE COURT: Is it from the relevant time frame?

18 MR. BRADLEY: It's from the relevant time frame, and
19 it would go to the issue of whether he was deliberately
20 indifferent to the issues that Mr. Jacobs has brought up. And
21 I would like to offer that.

22 THE COURT: Are you aware of that certification,
23 Mr. Jacobs?

24 MR. JACOBS: No, I'm not, Your Honor.

25 THE COURT: Can you get him an exhibit that shows

1 what that means, that you would intend to rely on?

2 MR. BRADLEY: I'll do that.

3 That is all I wish to bring up to the Court.

4 THE COURT: Okay. So, he'll get that to you, and
5 you can look at it. If there's any way to get it to him prior
6 to Monday, that would be greatly appreciated.

7 MR. BRADLEY: I'll try. I'll try.

8 THE COURT: So then we have as few delays as we can
9 possibly have. It's difficult, given the situation with the
10 transportation and the need to have the guards present.
11 Everybody needs to go back; Mr. Jacobs needs to get his meals.

12 Okay. Anything else, then?

13 One other thing, I do want to also have ordered that
14 portion of the transcript where the Court, outside the
15 presence of the jury, was engaged in a colloquy with the
16 parties regarding the refusal of Mr. Edwards and Mr. Smith to
17 come out of their cells. So we can have that, because I
18 think, then, that will reflect the appropriate portions.

19 If you feel there's something else, Mr. Bradley,
20 that needs to be included, so that we have, we have the
21 appropriate record of this.

22 MR. BRADLEY: I understood you were going to do --
23 you had already ordered that.

24 THE COURT: I had ordered the portions where those
25 witnesses were testifying, but there was a colloquy the day

1 before about their refusal to testify.

2 MR. BRADLEY: I understand.

3 THE COURT: I want that, too, because I think that
4 shows why the issue came up. I think it's just necessary, so
5 it puts everything in context.

6 MR. BRADLEY: Okay. I misunderstood.

7 THE COURT: So, if there's something else that's not
8 included you feel, that would be on the record that needs to
9 be included, you need to let the court reporter know, so that
10 that can also be transcribed.

11 MR. BRADLEY: I can't think of anything elsewhere
12 that was discussed on the record.

13 THE COURT: Okay.

14 MR. JACOBS: Just one last issue. Due to the late
15 nature of the defendant raising an issue concerning the
16 Fourteenth Amendment due process with respect to the seizure
17 of the documents -- you remember that issue?

18 THE COURT: Yes, I do.

19 MR. JACOBS: I'm requesting that that ruling be
20 reconsidered, on the grounds that I have discovered that under
21 the DOC policy, I was not permitted to grieve the issue of the
22 misconduct, under the DC ADMIN-804, and that although Your
23 Honor has stated that I will still have the alternative to go
24 into State Court with the claim.

25 THE COURT: The question was conversion, and you

1 did -- I believe there was a grievance relating to the fact
2 that your property was taken.

3 MR. JACOBS: From Mr. Banks.

4 THE COURT: I think it was from Mr. Lyons.

5 MR. JACOBS: From, I filed a grievance about that.

6 THE COURT: Yes.

7 MR. JACOBS: But I didn't file a grievance about the
8 documents relating to Mr. Banks, because it was processed
9 under the DC ADMIN-801, which prohibits a prisoner from
10 grieving matters related to an 801.

11 THE COURT: That's why I also put on the record, if
12 you felt that was your property, not returned to you, and was
13 taken improperly, that you have filed a State law claim for
14 conversion, and that in and of itself is sufficient to satisfy
15 the due process requirements.

16 MR. JACOBS: I understand that. And now, what I'm
17 saying at this point is that had I been informed of this, had
18 the defendants filed a proper motions at the proper time, I
19 could have asserted that claim in a timely manner. I could
20 have asked this Court to exercise supplemental jurisdiction.

21 Being as though that the claim is so intertwined
22 with the Federal claims, Your Honor does have authority to
23 consider State law claims under the supplemental jurisdiction.

24 THE COURT: You want to include a claim for
25 conversion at this stage?

1 MR. JACOBS: I would like to, Your Honor. I would
2 like you to supplement. I would like you to exercise your
3 supplemental jurisdiction.

4 THE COURT: And have the claim for conversion?

5 MR. JACOBS: Yes, Your Honor.

6 THE COURT: Okay. So, you'll need to consider that.

7 MR. BRADLEY: Just briefly, Your Honor, I would
8 submit, he did have the same due process that he would have
9 been afforded in the grievance process, in the misconduct that
10 he appealed to the same level. So he basically had the same
11 problem, same due process available.

12 THE COURT: Because he would have, within the
13 misconduct, been arguing that it was his property and not the
14 other side's property.

15 MR. BRADLEY: Yes.

16 THE COURT: Not Mr. Banks property.

17 MR. BRADLEY: Yes.

18 MR. JACOBS: But that, in light of Mr. Ferson's
19 testimony that the evidence was not even preserved, there was
20 no likelihood or even possibility that the document, the
21 property could have been returned to me.

22 MR. BRADLEY: Mr. Ferson's testimony was, he left it
23 in the Lieutenant's office.

24 MR. JACOBS: Right. But there's no documentation,
25 there's no type of evidence that it was preserved; whereas, in

1 the grievance process --

2 THE COURT: See, the problem with it being your
3 property, if it is, if it is taken from you, then, you're
4 entitled to the value of the property. And that's another
5 problem here, one which I didn't get into, and that's, that's
6 what's the value of the property? If it's de minimis, there's
7 some concern about whether there's a viable claim, you know,
8 if something is very de minimis in value, you know, how -- how
9 you know, how would that rise to the level of a, of a
10 Constitutional right for the Fourteenth Amendment.

11 MR. JACOBS: Okay.

12 THE COURT: Okay? I mean, you know, the problem,
13 when you're talking about taking your property without due
14 process, if it's property that's of a de minimis value, paper,
15 you know, that's, that's what we're -- that's the property, is
16 the paper. I understand that there is a, there's an intrinsic
17 value that you would be arguing with respect to how that would
18 affect your ability to access the Courts. But that's covered
19 with your access to Court claim. They took property that was
20 preventing you from litigating your appeal, and then, also
21 prosecuting the case that you were the plaintiff in. So that
22 that's where that is covered, in terms of the substance and
23 nature.

24 And when you're talking about the due process and
25 taking your property, you know, the Courts have to focus on

1 what is the property. And that's where the, the issue is.
2 I'm not trying to resolve anything on the record today, but if
3 you're talking about two pieces of property, two pieces of
4 paper, in terms of what the value would be of two pieces of
5 paper, I know there's an issue with respect to access to
6 Courts that's handled in the other claim, but if we're talking
7 about, you should have had -- just because you want those two
8 pieces of paper, what's the intrinsic, what's the actual value
9 of those two pieces of paper, you know. And then, that's
10 really --

11 MR. JACOBS: To pursue legal claims.

12 THE COURT: But that goes to your right to access to
13 Court.

14 MR. JACOBS: But would it also go to the question of
15 the value of those particular documents?

16 THE COURT: Well, the value, when you're talking
17 about conversion and that type of thing, you're talking about
18 the real value of the property.

19 You know, I could have something that has a lot of
20 sentimental value to me. I can say you can't put a price on
21 it, but when your dealing with conversion, you're talking
22 about what the market price for that type of item is.

23 So we'll -- we have to be going all down those
24 issues, and really, the gist of your concern here is the
25 property was taken; that interfered with your ability to

1 access the Courts. And that's the main thrust of it. And
2 you, I told you, you have as much opportunity as you want to
3 bring out evidence that it was your property, that they took
4 those pages, and how that affected you. And when -- we've
5 done that here.

6 But for a claim for two pieces of paper, to describe
7 the Pennsylvania law on conversion, where they have to
8 attribute a market value to that, how are you going to value
9 the two pieces of paper? And it's the market value, not in an
10 intrinsic value, per se. So, you may get nominal damages, but
11 you would get -- you can get the same --

12 MR. JACOBS: I understand, Your Honor.

13 THE COURT: I think we need -- so just think about
14 that.

15 MR. JACOBS: Okay.

16 THE COURT: Okay? And you can think about it, too,
17 Mr. Bradley, in terms of what he's arguing now, where he
18 essentially wants the Court to recognize his claim for
19 conversion. And if you have any cases that would support that
20 the misconduct which involves property is similar to the
21 grievance process that would suffice for the procedural due
22 process under the Fourteenth Amendment, I would appreciate
23 seeing those cases.

24 MR. JACOBS: And just this policy issue.

25 THE COURT: Right. See, we had a discussion on that

1 sometime pretrial, where you turned over, the defendants
2 turned over the policies, and I think you didn't have the
3 policies from the exact time frame, but there would be a
4 stipulation that those were the same policies.

5 MR. BRADLEY: I know I just provided Mr. Jacobs --

6 THE COURT: We'll have to look at the record of that
7 hearing. Think about that and see, if you go back and check
8 your records, if -- see what you turn up. It may well be the
9 date of the policy the plaintiff was using.

10 MR. JACOBS: And in any event, I will get a policy
11 that was in effect at the time.

12 THE COURT: Okay.

13 MR. JACOBS: That will resolve it.

14 THE COURT: Okay. You can just double check,
15 though. See if they are exactly the same. If they are, we
16 won't need to deal with it any more in front of the jury.

17 MR. JACOBS: Okay.

18 THE COURT: Okay? Okay. The hearing is adjourned.

19 MR. JACOBS: Thank you, Your Honor.

20 THE COURT: We're in recess for the day.

21 MATTHEW FERGUS, Law Clerk: All rise.

22 (Whereupon, court adjourned at 5:15 p.m.)

23 * * * * *

24

25

I N D E XPLAINTIFF WITNESSESDIRECTCROSSREDIRECTRECROSS

Michael Edwards

By Mr. Jacobs

3 (out of presence of jury)
7

By Mr. Bradley

25

David Smith

By Mr. Jacobs

29 (out of presence of jury)

Gary Banks

By Mr. Jacobs

50

By Mr. Bradley

66

DEFENDANT WITNESSESDIRECTCROSSREDIRECTRECROSS

Shelly Mankey

By Mr. Bradley

75

By Mr. Jacobs

38

76

Charles Simpson

By Mr. Bradley

88

By Mr. Jacobs

92

104

106

Michael Ferson

By Mr. Bradley

109

By Mr. Jacobs

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* * * * *

I certify by my original signature herein
that the forgoing is a correct transcript from the record of
proceedings in the above-entitled matter.

s/Virginia S. Pease
Official Court Reporter